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# Federal Register

Wednesday
November 18, 1987

**Briefings on How To Use the Federal Register—**
For information on briefings in Denver, CO, see announcement on the inside cover of this issue.

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## THE FEDERAL REGISTER
## WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### DENVER, CO

**WHEN:** December 15; at 9 a.m.
**WHERE:** Room 239, Federal Building, 1961 Stout Street, Denver, CO.
**RESERVATIONS:** Call the Denver Federal Information Center, 303-564-6575

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**Separate Parts In This Issue**



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**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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# Presidential Documents

Title 3—

## The President

Proclamation 5742 of November 16, 1987

## Recognition of the Disabled American Veterans Vietnam Veterans National Memorial as a Memorial of National Significance

By the President of the United States of America

A Proclamation

Near Eagle Nest, New Mexico, on a hilltop between peaks of the Sangre de Cristo Mountains and overlooking the Moreno Valley, stands a memorial to our country's Vietnam veterans. The origin of this shrine explains exactly why Americans for all the generations to come will consider it a memorial of national significance.

The monument arose from one family's grief and solemn pride in a gallant son who gave his life for his fellow Marines, for his country, and for a people oppressed. On May 22, 1968, First Lieutenant Victor David Westphall III, USMC, a rifle platoon commander, was killed in an enemy ambush in Con Thien, Republic of Vietnam. His parents, Dr. and Mrs. Victor Westphall, and his younger brother Douglas decided to erect a permanent memorial to honor his spirit and that of his 12 comrades in arms who died along with him in that battle.

Dedicating their own time and resources, the Westphalls built an inspirational monument rising nearly 50 feet in dramatic architectural lines and containing a memorial chapel where visitors could pray and reflect upon the sacrifices America's fighting forces have made to keep our country free.

The Westphalls completed the memorial in 1971 and named it the Vietnam Veterans Peace and Brotherhood Chapel. In 1982, the Disabled American Veterans (DAV), a national organization of more than one million veterans disabled in military service, formed a special nonprofit corporation to assume ownership and assure perpetual maintenance of the shrine. The DAV has added a visitors' center, guest house, and access to the site for disabled persons.

On Memorial Day, 1983, the memorial was rededicated and given its present name. Later that year the New Mexico Legislature declared it a State memorial. The Disabled American Veterans Vietnam Veterans National Memorial has become known to millions of Americans and has inspired the construction of other memorials to Vietnam veterans across our land. It has forever acquired a place in the history and heritage of the United States and in the hearts of all who would salute the valor, the honor, and the sacrifices of America's Vietnam veterans.

The Congress, by Public Law 100–164, approved November 13, 1987, has recognized the Disabled American Veterans Vietnam Veterans National Memorial as a memorial of national significance and requested the President to issue a proclamation in observance thereof.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby commemorate the recognition of the Disabled American Veterans Vietnam Veterans National Memorial as a memorial of national significance. I also salute the efforts of the individuals who have made possible the creation and continued existence of this memorial.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of November, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-26788
Filed 11-17-87; 11:16 am]
Billing code 3195-01-M

# Rules and Regulations

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Parts 21 and 23

**[Docket No. 041CE, Special Conditions No. 23-ACE-35]**

## Special Conditions; Mooney Model M20 Series Airplanes With Porsche PFM3200 Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued to become part of the type certification basis for the Mooney Model M20 Series Airplanes with Porsche PFM3200 Engines installed. The airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. The novel and unusual design features include the installation of the Porsche PFM3200 Engine, which incorporates an electronic ignition system and a unique single-level power control, for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of Part 23.

**EFFECTIVE DATE:** November 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Oscar Ball, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374-5688.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 10, 1986, Mooney Aircraft Corporation, Post Office Box 72, Kerrville, Texas 78029-0072, made application to the FAA to amend Type Certificate 2A3 to incorporate a new Model M20L. The M20L is a small, four-place cabin, normal category airplane. The Model M20L is basically a Model M20K with the Porsche PFM 3200No3 Engine installed. The Porsche engine installation incorporates an elecronic ignition system and a single-lever power control.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b).

The Porsche engine installation in the Mooney M20 Series Airplane incorporates novel and unusual design features not envisaged in the applicable airworthiness standards. These special conditions are adopted to supply the additional airworthiness standards the Administrator finds appropriate for the novel and unusual design features of the Mooney/Porsche installation.

### Type Certification Basis

The type certification basis for the Mooney Model M20L Airplane is CAR 3, effective November 1, 1949, as amended to May 18, 1954, with §§ 3.109, 3.112, 3.115, 3.118, 3.120, and 3.441 of CAR 3, effective May 15, 1956, as amended to October 1, 1959; CAR 3.74 of Amendment 3-13 dated August 25, 1955; FAR 23, effective February 1, 1965; §§ 23.901 through 23.953, 23.955 through 23.963, 23.967 through 23.1063; as amended to September 14, 1969; §§ 23.1091 through 23.1105, as amended to February 1, 1977; §§ 23.1121 through 23.1193, 23.1351 through 23.1401, 23.1527, 23.1553, and 23.33, as amended to September 14, 1969; §§ 23.1441 through 23.1449, as amended to June 17, 1970; § 23.853(d) and § 23.1557, as amended to December 20, 1973; Part 36, effective September 20, 1976; Exemption No. 4753A; and these special conditions.

### Discussion of Comments

Five sets of comments were received in response to Notice No. 23-ACE-35, published in the **Federal Register** on September 2, 1987 (52 FR 33246). The closing date for comments was October 5, 1987.

Generally, the commenters support the need for the special conditions, but in the case of Special Condition No. 2, they request guidance on acceptable means of compliance.

Briefly, the comments can be summarized as follows:

Four commenters agree with the need for Special Condition No. 1 and indicate that they know how to comply with lightning test requirements. The fifth commenter did not comment on Special Condition No. 1.

Four commenters agree with the FAA that Special Condition No. 2 is needed but requested that the FAA be more specific on Radio Emergency (RF) threat power levels and on what constitutes acceptable means of compliance. Three commenters suggest flight tests through a known (defined) threat. Three commenters suggested meeting with the FAA to obtain a definition of the threat environment and to discuss acceptable means of compliance. The FAA hosted a meeting with the requesting commenters on October 15, 1987, at the Small Airplane Certification Division, Kansas City, Missouri. A summary of the meeting discussion has been filed in the docket.

On Special Condition No. 3, three commenters agree with the need and indicate that they know how to show compliance. The fourth commenter does not agree that a special condition is needed; he states that § 23.1309(c) provides adequate requirements. The FAA does not agree. While § 23.1309(c) is adequate for familiar, standardized systems, this unusual design feature (single-lever power control) requires a more specific rule to assure a safe and reliable installation. The fifth commenter did not comment on Special Condition No. 3.

In summary, the majority of commenters agrees that all three special conditions should be adopted as proposed. The main questions and comments address the concerns of the acceptable means of compliance to

Special Condition No. 2. The commenters question for RF threat levels they expect the FAA to impose upon them and state that they have found no test facilities capable of testing their equipment to those levels.

As stated in Notice 23-ACE-35, the FAA and other airworthiness authorities are working to establish an agreed level of RF energy representative of that to which the airplane will be exposed in service. The FAA continues to pursue these efforts through normal channels. The situation is ever changing; however, the FAA expects to establish an FAA-wide policy on High Energy Radio Frequency Fields in the near future.

### Conclusion

This action affects only the Mooney Model M20 Series Airplanes with Porsche PFM3200 engines installed. It is not a rule of general applicability and applies only to the models and series of airplane identified in these final special conditions.

### List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety.

The authority citation for these special conditions is as follows:

**Authority:** Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

### Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for the Mooney Model M20 Series Airplanes with Porsche PFM3200 Engines installed:

1. *Lightning Protection.* In addition to compliance with other applicable requirements relative to lightning protection, each electronic propulsion control system component, whose failure to function properly would prevent the continued safe flight and landing of the airplane, must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to lightning.

2. *Protection from Unwanted Effects of Radio Frequency (RF) Energy.* In the absence of specific requirements for protection from the unwanted effects of RF energy, each electronic propulsion control system component, whose failure to function properly would prevent the continued safe flight and landing of the airplane, must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to externally radiated electromagnetic energy.

3. *Propulsion Control System.* In addition to the requirements applicable to throttle, mixture and propeller controls, components of the propulsion control system, both airframe and engine manufacturer furnished, that affect thrust and that are required for continued safe operation, must be shown to have the level of integrity and reliability of the typical Mooney Model M20 propulsion control system with independent throttle, mixture, and propeller controls.

Issued in Kansas City, Missouri, on October 30, 1987.

**James O. Robinson,**

*Acting Director, Central Region.*

[FR Doc. 87-26509 Filed 11-17-87; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 87-NM-71-AD; Amdt. 39-5770]**

## Airworthiness Directives; Airbus A300 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts an airworthiness directive (AD), applicable to all Airbus A300 series airplanes, which requires a one-time-only visual inspection and repair, if necessary, of the rear pressure bulkhead. This amendment is prompted by reports of corrosion being detected in the area around the lower rim of the rear pressure bulkhead. This condition, if not corrected, could eventually lead to failure of the bulkhead.

**EFFECTIVE DATE:** December 24, 1987.

**ADDRESSES:** The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires a one-time only inspection of the rear pressure bulkhead for corrosion, was published in the **Federal Register** on July 24, 1987 (52 FR 27822). The comment period for the proposal closed on September 7, 1987.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter stated that some of their airplanes were in storage for two years prior to their introduction into service. The commenter requested that the proposed AD be revised to state that the inspection be conducted four and one-half years since the first flight in revenue service. Since corrosion of the rear pressure bulkhead is attributed to leakage of the lavatory fluids, and the airplane manufacturer indicated that the lavatory contained no fluids until the airplane was introduced into service, corrosion of the rear pressure bulkhead, therefore, could not start prior to the airplane's introduction into revenue service. The FAA has considered this information and concurs with the commenter. The final rule has been changed accordingly.

Paragraph B. of the AD has been revised to require the concurrence of the FAA Principal Maintenance Inspector in requests by operators for use of alternate means of compliance. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

It is estimated that 52 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $16,640.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034: February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Airbus A300 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subject in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Airbus Industrie:** Applies to all Model A300 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect corrosion in the area of the rear pressure bulkhead, accomplish the following:

A. Perform a visual inspection for corrosion in the lower rim area of the rear pressure bulkhead, and repair, if necessary, prior to further flight, in accordance with Airbus Industrie Service Bulletin A300-53-213, dated November 18, 1986, as follows:

1. On airplanes with less than 4.5 years since the first flight in revenue service as of the effective date of this AD: inspect within 6 months after the airplane has reached 4.5 years since the first flight in revenue service.

2. On airplanes with 4.5 years or more, but less than 6 years since the first flight in revenue service: inspect within the next 6 months after the effective date of this AD.

3. On airplanes with 6 years or more since the first flight in revenue service: inspect within the next 3 months after the effective date of this AD.

B. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 24, 1987.

Issued in Seattle, Washington, on October 30, 1987.

**Frederick Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-26510 Filed 11-17-87; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 87-NM-76-AD; Amdt. 39-5777]**

## Airworthiness Directives; Boeing Models 747 and 767 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendent adopts a new airworthiness directive (AD), applicable to certain Boeing Models 747 and 767 series airplanes, which requires a modification to the weather radar receiver-transmitters to correct for the Instrument Landing System (ILS) susceptibility to electromagnetic interference (EMI). This amendment is prompted by reports of several airplane models in which EMI generated by various digital electronic equipment has been shown to be a source of false localizer signals that can cause apparently normal operation of the localizer deviation bars. This condition, if not corrected, could lead to erroneous ILS deviation information displayed to the flight crew and abnormal operation of the autopilot.

**EFFECTIVE DATE:** December 29, 1987.

**ADDRESSES:** The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth J. Schroer, Aerospace Engineer, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1943. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires modification to the weather radar receiver-transmitters on certain Boeing Models 747 and 767 series airplanes, was published in the **Federal Register** on July 2, 1987 (52 FR 25025)

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters requested that the compliance period be extended from the proposed six months due to the limited modification rate the manufacturer of the weather radar can undertake at its repair facilities. Inquiry by the FAA as to the modification kit production rate, and a further review of the total number of units which must be modified in order to maintain adequate spare interchangeability among an airlines fleet, has substantiated the commenters' concern that compliance within six months logistically cannot be accomplished. Further, Boeing has issued Operations Manual Bulletins No. 767-86-15, Revision 1, dated January 23, 1987, and No. 747-86-3, Revision 2, dated February 3, 1987, to alert flight crews to the potential abnormal condition and, in part, to advise the crew to continuously monitor the ILS audio signal through completion of the ILS approach. After considering this information, the FAA has determined that the compliance time may be extended to twelve months without signficantly impacting safety. The final rule has been changed accordingly.

In addition, one commenter requested that the final rule reference Revision 1 to Service Bulletin 767-34A0055. The effect of this revision is to reduce the number of airplanes requiring modified weather radar receiver-transmitter because it was determined that certain equipment combinations are not susceptible to the EMI. This revision received FAA approval September 17, 1987, and the final rule had been changed accordingly. The FAA has determined that this change will not increase the economic burden on any operator.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

It is estimated that 37 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,480.

For the reasons discussed above, the FAA has determine that this regulation is not considered to be major under

Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model 747 and Model 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Adminstrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 and Model 767 series airplanes, specified in Boeing Service Bulletins 747-34A2286 dated April 30, 1987, and 767-34A0055, Revision 1, dated September 17, 1987, certificated in any category. Compliance required within 12 months after the effective date of this AD, unless previously accomplished.

To minimize the possibility of misleading localizer deviation indication to the flight crew caused by electromagnetic interference, accomplish the following:

A. Replace the existing weather radar receiver-transmitters with modified receiver-transmitters in accordance with the appropriate Boeing Service Bulletin 747-34A2286, or 767-34A0055, both dated April 30, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 6, 1987.

This amendment is effective December 29, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-26503 Filed 11-17-87; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 87-NM-69-AD; Amdt. 39-5775]**

## Airworthiness Directives; Boeing Model 757 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires modification of the hydraulic system for the power transfer unit by the addition of two check valves and associated tubing. This amendment is prompted by reports of the power transfer unit shutting down during automatic operation due to low fluid level. This condition, if not corrected, could result in inability to extend the landing gear.

**EFFECTIVE DATE:** December 29, 1987.

**ADDRESSES:** The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert C. McCracken, System and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires modification of the hydraulic system for the power transfer unit by the addition of two check valves and associated tubing on certain Boeing Model 757 airplanes was published in the **Federal Register** on July 6, 1987 (52 FR 25236).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter, the Air Transport Association of America, requested that the compliance period be extended from six months, as proposed, to one year. The commenter stated that, on some airplanes, the modification would have to be scheduled away from the operator's main base and, due to the manhours involved, might require several maintenance "holds" to complete. A one year compliance time would allow operators to schedule the modification during routine extended maintenance. The FAA has determined that the extension will not result in a degradation of safety, and concurs with the comment. The final rule has been changed to require the modification to be performed within one year, to allow the work to be scheduled into established maintenance programs.

A second commenter, The Boeing Company, stated that the service bulletin referred to in the NPRM has been revised to replace the reservoir return line check valve with a restrictor check valve thereby providing limited back flow capability from the reservoir. Boeing recommends revising the final rule to reflect Revision 1 of the service bulletin. The FAA concurs with the recommendation, and the final rule has been revised to require modification in accordance with the revised service bulletin. The FAA has determined that change will not increase the economic burden on any operator.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

It is estimated that 81 airplanes of U.S. registry will be affected by this AD, that it will take approximately 19 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $61,560.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant

economic effect on a substantial number of small entities because few, if any, Boeing Model 757 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Boeing:** Applies to Model 757 series airplanes, line position 0002 through 0138, certificated in any category. Compliance required within the next one year after the effective date of this AD, unless previously accomplished.

To prevent shutdown of the power transfer unit and inability to extend the landing gear, accomplish the following:

A. Modify the hydraulic system in accordance with Boeing Alert Service Bulletin 757-29A0035, Revision 1, dated September 10, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 29, 1987.

Issued in Seattle, Washington, on November 6, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-26502 Filed 11-17-87; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 86-NM-209-AD; Amdt. 39-5772]**

## Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires structural inspections and repairs or replacement, as necessary, on high time British Aerospace Model BAC 1-11 200 and 400 series airplanes to assure continued airworthiness. Some British Aerospace Model BAC 1-11 200 and 400 series airplanes have exceeded the manufacturers' original fatigue design life goal. These older airplanes are the ones most likely to develop fatigue cracks. The manufacturer has completed a structural integrity audit to assess the continuing viability of the present structural inspection requirements in relation to the aircraft damage tolerance characteristics. Based on this audit, the manufacturer has identified certain structurally significant items which, if cracking does develop and is permitted to grow undetected, may result in the inability of the airplane structure to carry the required loads. This AD defines structural inspection requirements for the identified items necessary to maintain the structural integrity of these airplanes.

**EFFECTIVE DATE:** December 24, 1987.

**ADDRESSES:** The applicable service information may be obtained from British Aerospace, Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires revision of operator's maintenance program to provide for inspection of structural items on British Aerospace Model BAC 1-11 series airplanes, in accordance with British Aerospace Alert Service Bulletin 51-A-PM5830, was published in the **Federal Register** on March 16, 1987 (52 FR 8079).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer provided several corrections and clarifications to the preamble to the proposal. In regards to the proposed AD, it was pointed out that the latest version to Alert Service Bulletin 51-A-PM5830 was Issue 3, and this should be specified in the AD. This issue was released after the NPRM had been published and includes inspections for the 500 series airplanes, as well as several additional inspections for the 200 and 400 series airplanes.

The FAA does not concur. Since the NPRM cited compliance with Issue 2 of the alert service bulletin, it would be expanding the scope of this AD to require compliance with Issue 3. Moreover, the 500 series airplane is not yet certificated in the United States. The FAA may consider further rulemaking action to address the provisions of Issue 3 of the service bulletin.

The manufacturer also recommended that the reporting instructions be clarified to include reports to the

manufacturer even if no damage was found. The FAA concurs and has revised the final rule accordingly.

The Air Transport Association (ATA) of America requested a provision be included in this rule which grants exemption to those operators who have acceptably incorporated the Supplemental Inspection Document into their approved maintenance program. The FAA does not concur with the request. The maintenance program, including inspection intervals, of each operator is subject to review and adjustment based on each operator's service experience are reliability program. These adjustments may not comply with the criteria used to generate the Supplemental Inspection Program. The FAA has determined that adequate provisions have been incorporated into the applicability statement of the AD to grant credit for those operators who have previously accomplished the intent of the AD.

An operator requested that Paragraph 2 of the final rule be amended to permit repetitive inspections at intervals approved by the manufacturer. The FAA does not agree with this change. Such a provision would effectively delegate the FAA's regulatory authority to a private entity. The FAA has no statutory authority to make such a delegation. Paragraph 4 of the final rule provides operators the option to obtain variations in compliance with the AD, if approved by the FAA.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the previously mentioned changes.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned the OMB Control Number 2120-0056.

It is estimated that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1600 manhours per airplane to accomplish the initial inspections, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $4,480,000 for the initial inspections.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, British Aerospace Model BAC 1-11 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**British Aerospace:** Applies to Model BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance is required as indicated below, unless previously accomplished.

To ensure continuing structural integrity, accomplish the following:

1. Within one year after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which requires accomplishment of the inspections and repairs, as necessary, of each Structural Significant Item as listed in Table 1 of British Aerospace BAC 1-11 Alert Service Bulletin 51-A-PM5830, Supplemental Inspection Document, Issue 2, dated March 21, 1983. The revision to the maintenance program must include procedures to notify the manufacturer of the results of all inspections, including nil defects, of significant structural items. The inspection thresholds, repetitive intervals, and inspection techniques are listed in the alert service bulletin.

2. Inspect each Structural Significant Item within one and one-half years after the effective date of this AD or prior to the accumulation of the number of landings listed in the landing threshold indicated in the alert service bulletin, whichever occurs later, and thereafter, repeat these inspections at intervals not to exceed the landings specified in the service bulletin.

3. If cracks are found, prior to further flight:

a. Replace with a serviceable part of the same part number; or

b. Repair in accordance with the Structural Repair Manual, listed in the service bulletin; or

c. Repair in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

4. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

5. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace, Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 24, 1987.

Issued in Seattle, Washington, on October 30, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-26511 Filed 11-17-87; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF COMMERCE

## International Trade Administration

## 15 CFR Parts 371, 373, 375 and 399

**[Docket No. 70904-7204]**

## Amendments to the Commodity Control List Based on COCOM Review; Exports to the People's Republic of China

**AGENCY:** Export Administration, International Trade Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** Export Administration maintains the Commodity Control List (CCL), which contains those items controlled for export by the Department of Commerce. The "Advisory Notes" in various entries of the CCL specify those commodities covered by a particular entry that are more likely to be approved for export than others.

This rule amends several Advisory Notes affecting exports to the People's Republic of China of general industrial equipment; electronics and precision instruments; and chemicals, metalloids, petroleum products and related materials. These changes result from the review of the system of strategic export

controls maintained by the United States and certain allied countries through the Coordinating Committee (COCOM).

In addition, this rule raises the maximum dollar value of exports and reexports to the People's Republic of China under General License GLR, the Service Supply procedure, and on the Statement of Ultimate Consignee and Purchaser (Form ITA-629P) from $50,000 to $75,000.

**EFFECTIVE DATE:** This rule is effective November 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** For questions of a general nature: John Black or Patricia Muldonian, Regulations Branch, Export Administration, Telephone: (202) 377-2440.

For questions of a technical nature on general industrial equipment: Bruce Webb, Capital Goods Technology Center, Export Administration, Telephone: (202) 377-3806.

For questions of a technical nature on electronics and precision instruments: Robert Anstead, Electronic Components Technology Center, Export Administration, Telephone: (202) 377-1641.

For questions of a technical nature on chemicals, metalloids, petroleum products and related materials: Jeffrey Tripp, Capital Goods Technology Center, Export Administration, Telephone: (202) 377-5695.

**SUPPLEMENTARY INFORMATION:**

**Rulemaking Requirements**

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Regulations Branch, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0625-0001, 0625-0041 and 0625-0136.

**List of Subjects in 15 CFR Parts 371, 373, 375 and 399**

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

1. The authority citation for Parts 371, 373, and 399 continues to read as follows:

**Authority:** Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (56 FR 39505, October 29, 1986).

2. The authority citation for 15 CFR Part 375 continues to read as follows:

**Authority:** Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

**PART 371—[AMENDED]**

**§ 371.17 [Amended]**

3. Section 371.17(e)(4)(i) is amended by revising the figure of "$50,000" to read "$75,000".

**PART 373—[AMENDED]**

**§ 373.7 [Amended]**

4. Section 373.7(i)(4) is amended by revising the figure of "$50,000" to read "$75,000".

**PART 375—[AMENDED]**

**§ 375.6 [Amended]**

5. Section 375.6(c)(3) is amended by revising the phrase "$50,000 or less" to read "$75,000 or less".

**PART 399—[AMENDED]**

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1355A is amended by revising paragraph (o) of the first Advisory Note for the People's Republic of China to read as follows:

**1355A Equipment for the manufacture or testing of electronic components and materials; and specially designed components, accessories, and "specially designed software" therefor.**

* * * * *

Controls for ECCN 1355A

* * * * *

Advisory Note for the People's Republic of China: * * *

(o) Photo-optical contact and proximity mask align and exposure equipment defined in paragraph (b)(2)(vi), and projection aligners that can produce pattern sizes no finer than 3 micrometers;

* * * * *

7. In Supplement No. 1 to § 399.1 (the Commdity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1501A is amended by adding an Advisory Note for the People's Republic of China at the end of the entry, reading as follows:

**1501A Navigation, direction finding, radar and airborne communication equipment.**

* * * * *

Advisory Note for the People's Republic of China

Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of global positioning satellite receivers controlled for export by subparagraphs (b)(4) and (5) of this ECCN with all of the following characteristics:

(a) Capable of processing only the L1 Channel, also called the Standard Positioning Service (SPS) channel;

(b) Capable of processing only the commercial modulation frequency;

(c) Capable of processing only the Short-Term Code, also called the Coarse Acquisition Code (C/A) with short term generation cycle;

(d) No decryption capabilities;

(e) No cesium beam standards; *and*
(f) No null steerable antennae.

8. Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Croup 5 (Electronics and Precision Instruments), ECCN 1502A is amended by adding an Advisory Note for the People's Republic of China at the end of the entry, reading as follows:

**1502A Communication, detection or tracking equipment of a kind using ultra-violet radiation, infrared radiation or ultrasonic waves, and specially designed components therefor.**

**Advisory Note for the People's Republic of China**

Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of thermal imaging cameras containing pyroelectric vidicons, designed for fire fighting and buried body detection, with optimum sensitivity in the wavelength of 8 to 14 microns.

9. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1519A is amended by redesignating the Advisory Note for the People's Republic of China as "(Advisory) Note 5 for the People's Republic of China" and by revising paragraph (d) and adding paragraphs (d)(1) and (2); by revising the Note immediately following the Advisory Note for the People's Republic of China and designating it as "Note 1"; by redesignating Notes 1 and 2 (after the Advisory Note for the People's Republic of China) as Notes 2 and 3, respectively; and by adding a new (Advisory) Note 6 for the People's Republic of China, reading as follows:

**11519A Single- and multi-channel communications transmission equipment, including terminal, intermediate amplifier or repeater equipment and multiplex busses and multiplex equipment used for communications within or between communication or other equipment and systems by line, cable, optical fiber or radio means, and associated modems and multiplex equipment.**

* * * * *

**(Advisory) Note 4:** * * *

(Advisory) Note 5 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following equipment or components and accessories controlled for export by paragraphs (b) or (d) of this ECCN:

* * * * *

(d) Test of measurement equipment necessary for the use (*i.e.*, installation, operation and maintenance) of equipment exported under the provisions of this Advisory Note 5, provided:

(1) It cannot operate at a data rate exceeding 140 Mbits per second; and
(2) It will be supplied in the minimum quantity required for the transmission equipment eligible for export under this Advisory Note 5.

**Note 1:** Where possible, built-in test equipment (BITE) will be provided for installation or maintenance of transmission equipment eligible for consideration under the Advisory Note 5 rather than individual test equipment.

**Note 2:** * * *

**Note 3:** * * *

**(Advisory) Note 6 for the People's Republic of China:** Licenses are likely to be approved for satisfactory end-users in the People's Republic of China of the following equipment:

Modems and multiplexers controlled for export by subparagraphs (c)(1) and (3) of this ECCN designed for operation at "data signalling rates" of 19,200 bps or less.

10. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1520A is amended by revising the Advisory Note for the People's Republic of China to read as follows:

**1520A Radio relay communication equipment, specially designed test equipment, and specially designed components and accessories therefor.**

* * * *

**(Advisory) Note 5:** * * *

**(Advisory) Note 6 for the People's Republic of China:** Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following radio relay communication equipment:

(a) Analog microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 20 GHz with a capacity of up to 1,920 voice channels of 4 kHz each or of a television channel of 6 MHz maximum nominal bandwidth and associated sound channels;

(b) Digital microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 19.7 GHz with a capacity of up to 1,920 voice channels of 3.1 kHz or four television channels of 6 MHz maximum nominal bandwidth and associated sound channels;

(c) Ground communication radio equipment for use with temporarily-fixed services operated by the civilian authorities and designed to be used at fixed frequencies not exceeding 20 GHz;

(d) Radio transmission media simulators/channel estimators designed for the testing of equipment covered by paragraphs (a) or (b) of this Advisory Note 6; or

(e) Power amplifiers not exceeding 10 W and 6/4-GHz-transmitters/receivers for communication satellites.

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), the Advisory Note for the People's Republic of China in ECCN 1529A is amended by redesignating it as "(Advisory) Note 4 for the People's Republic of China"; by revising paragraphs (e) and (f) of Advisory Note 4; by removing paragraph (g) and redesignating paragraphs (h), (i), (j), (k) and (l) as (g), (h), (i), (j) and (k), respectively, of Advisory Note 4; and by revising paragraph (1), as follows:

**1529A Electronic measuring, calibrating, counting, testing, or time interval measuring equipment, whether or not incorporating frequency standards.**

* * * * *

**(Advisory) Note 3:** * * *

**(Advisory) Note 4 for the People's Republic of China:**

* * * * *

(e) Instruments incorporating computing facilities with "user-accessible programability" and an alterable program and data memory of a total of less than 32 Kbytes;

(f) Digital test instruments with "user-accessible programability" controlled for export by subparagraph (b)(5) of this ECCN 1529A, required for the use (installation, operation or maintenance) of microcircuits or computers that are exported to the People's Republic of China under Advisory Notes to ECCNs 1564A or 1565A;

* * * * *

(1) PROM programmers controlled by subparagraph (b)(6) of this ECCN.

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1531A is amended by revising in the *GFW Eligibility* paragraph the phrase "the Advisory Note" to read "Advisory Note 1"; by redesignating the first Advisory Note as "Advisory Note 1"; and by redesignating the Advisory Note for the People's Republic of China as "Advisory Note 2 for the People's Republic of China", revising the period at the end of paragraph (c) to a semicolon, and adding paragraphs (d) and (e), as follows:

**1531A Frequency synthesizers.**

* * * * *

**(Advisory) Note 2 for the People's Republic of China**

* * * * *

(d) Conventional synthesizer-based, digitally controlled, civil land or marine mobile radio receivers and transmitters, provided:

(1) They operate at frequencies not exceeding 960 MHz;

(2) The power output and frequency resolution parameters specified in subparagraph (e)(3)(ii) of this ECCN remain in force;

(3) The equipment has a switching time from one selected operating frequency to

another operating frequency of 5 milliseconds or more;

(4) The equipment does not employ either frequency agility or other spread spectrum techniques; *and*

(5) The synthesizers are embedded in the radio receivers or transmitters; and

(e) Radio receivers controlled for export by subparagraph (d)(1) of this ECCN that have 1000 selective channels or fewer.

13. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1533A is amended by revising the Advisory Note for the People's Republic of China to read as follows:

**1533A Signal analyzers (including spectrum analyzers), with any of the following characteristics, and specially designed components and accessories therefor.**

* * * * *

Note: * * *

Technical Note: * * *

**(Advisory) Note 7 for the People's Republic of China:** Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following equipment:

(a) Non-programable signal analyzers including those with a tracking signal generator, provided the display bandwidth is 4.4 GHz or less;

(b) Programable signal analyzers, including those with a scanning preselector or a tracking signal generator, having both of the following characteristics:

(1) Operating at frequencies of 4.4 GHz or less; *and*

(2) The overall dynamic range of the display not exceeding 100 dB;

(c) Signal analyzers employing time compression of the input signal of Fast Fourier Transform techniques not capable of:

(1) Analyzing signals with a frequency higher than 100 kHz if the instrument uses time compression, *or*

(2) Calculating 512 complex lines in less than 50 milliseconds.

[For logic and network analyzers and transient recorders, see ECCN 1529A.]

14. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1564A is amended by revising the Advisory Note for the People's Republic of China to read as follows:

**1564A "Assemblies" of electronic components, "modules," printed circuit boards with mounted components, "substrates" and integrated circuits, including packages therefor.**

* * * * *

**(Advisory) Note 7 for the People's Republic of China:** Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "assemblies," printed circuit boards and integrated circuits not specially designed to military standards for radiation hardening or temperature, as follows:

(a) "Substrates" for printed circuits, *except* those exceeding the limits of subparagraphs (a)(1)(E) or (a)(2) of this ECCN:

(b) Silicon-based devices exceeding the limits of:

(1) Subparagraphs (d)(2)(D)(a), (b) or (c), *except* those with more than 28 terminals;

(2) Subparagraphs (d)(2)(D)(g) or (h);

(3) Subparagraphs (d)(2)(D)(k), (l), (m)(4) and (5), (n), (r), (s) or (u); *or*

(4) Subparagraphs (d)(2)(D)(f) or (q);

(c) Silicon-based 8-bits of less "microcomputer microcircuits" exceeding the limits of subparagraphs (d)(2)(D)(e)(1) to (7);

(d) Silicon-based "microprocessor microcircuits" with an operand length of 16 bits or less and an arithmetic logic unit (ALU) not wider than 32 bits and exceeding the limits of subparagraphs (d)(2)(D)(i)(1) to (6), *except:*

(1) Those with total processing data rate exceeding 28 million bits per second;

(2) Bit-slice "microprocessor microcircuits";

(e) Silicon-based memory devices, as follows:

(1) MOS DRAMs with no more than 256 Kbits;

(2) MOS SRAMs with no more than 64 Kbits;

(3) Mask PROMs with no more than 512 Kbits;

(4) UV-EPROMs (except keyed access EPROMs) with no more than 256 Kbits;

(5) EAROMs with no more than 64 Kbits; or

(6) EEROMs with no more than 64 Kbits;

[Note: 1 Kbit = 1,024 bits.]

(f) Operational amplifiers exceeding the limits of subparagraph (d)(2)(D)(k)(4) that do not have slew rates exceeding 100 volts per microsecond;

(g) Analog-to-digital and digital-to-analog converters exceeding the limits of subparagraphs (d)(2)(D)(m)(1) to (3), *except:*

(1) Analog-to-digital converters with less than a 500 ns conversion time to a maximum resolution of 12 bits;

(2) Digital-to-analog converters with less than 500 ns settling time for voltage output and a maximum resolution of 12 bits;

(3) Digital-to-analog converters with less than 25 ns settling time for current output and a maximum resolution of 12 bits;

(h) Silicon-based 8-bits or less user-programable single chip "microcomputer microcircuits" controlled for export by subparagraph (d) of this ECCN;

(i) "Optical integrated circuits":

(1) Controlled for export by subparagraph (d) of this ECCN;

(2) With no more than 2,048 elements; *and*

(3) Not exceeding the limits of paragraphs (a) and (b) of ECCN 1548A; and

(j) Non-reprogramable silicon-based integrated circuits specially designed or programed by the manufacturer for business or office use.

15. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by revising paragraph (b)(1) in Advisory Note 17 for the People's Republic of China; by revising Advisory Note 18 for the People's Republic of China; and by adding a paragraph (c) to Advisory Note 19 for the People's Republic of China, as follows:

**1565A Electronic computers, "related equipment," equipment or systems containing electronic computers, and specially designed components and accessories for these electronic computers and "related equipment".**

* * * * *

**Advisory Note 17 (for the People's Republic of China):**

* * * * *

(b) * * *

(1) Central processing unit—"main storage" combinations with a "total processing data rate" of 285 million bits per second and a "total connected capacity" of "main storage" of 135 million bits;

(2) * * *

* * * * *

**Advisory Note 18 (for the People's Republic of China):** Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "digital computers" or "related equipment" therefor in accordance with Advisory Note 5 not exceeding 70 million bits per second under paragraph (c) of Advisory Note 5.

**Advisory Note 19 (for the People's Republic of China):**

* * * * *

(c) Disc drives that do not exceed any of the following parameters:

(i) A "maximum bit transfer rate" not exceeding 7.5 million bits per second;

(ii) a "net capacity" not exceeding 350 million bits.

* * * * *

16. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1585A is amended by adding an Advisory Note for the People's Republic of China at the end of the entry, reading as follows:

**1585A Photographic equipment.**

* * * * *

**Advisory Note for the People's Republic of China:** Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following:

(a) Non-ruggedized cinema recording cameras, controlled for export by paragraph (a) of this ECCN, for normal civil purposes;

(b) Mechanical framing cameras controlled for export by paragraph (b) of this ECCN that are designed for civil purposes (*i.e.*, non-nuclear use) with a framing speed of not more than $2 \times 10^6$ frames per second;

(c) Electronic streak and/or framing cameras having all of the following characteristics:

(1) Not ruggedized;

(2) Capable in the framing mode of speeds of no more than $10^6$ frames per second;

(3) Capable in the streak mode of writing speeds of no more than 10 mm per microsecond;

(4) Designed for civil use;

(5) The performance of the camera is not field-upgradable such as through the substitution of electronic plug-ins;

(6) Exported for non-nuclear use; and

(7) Not using an electron tube having a gallium arsenide (GaAs) photocathode.

17. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1757A is amended by removing the phrase "and the People's Republic of China" from Advisory Notes 1, 2 and 3 and by adding an Advisory Note for the People's Republic of China at the end of the entry, reading as follows:

**1757A Compounds and materials as described in this entry.**

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of silicon and compounds, as follows:

(a) Monocrystalline silicon, N-type, crystal orientation 1-1-1 with a resistivity not exceeding 100 ohm.cm;

(b) Monocrystalline silicon, P-type, crystal orientation 1-1-1 with a resistivity not exceeding 5 ohm.cm;

(c) Polycrystalline silicon;

(d) Compounds used in the synthesis of polycrystalline silicon.

Dated: November 13, 1987.

Vincent F. DeCain,

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 87-26570 Filed 11-17-87; 8:45 am]

BILLING CODE 3510-DT-M

## 15 CFR Parts 374 and 375

**[Docket No. 71011-7211]**

## Establishment of Import Certificate/ Delivery Verification Procedure for Finland and Ireland

**AGENCY:** Export Administration, International Trade Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** Export Administration requires a foreign importer to file an Import Certificate (IC) in support of certain individual export license applications. The IC is required in support of those applications to export certain commodities controlled for national security reasons to specified destinations. The commodities are identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List, a listing of those items subject to Department of Commerce export controls. By issuing an IC, the government of a country confirms that it will exercise legal control over the disposal of those commodities covered by the IC that are being exported to that country.

Export Administration also requires a Delivery Verification Certificate (DV) on a selective basis as described in 15 CFR 375.3(i). By issuing a DV, the government of a country to which an export has been made confirms that the exported commodities have either entered the export jurisdiction of that country or are otherwise accounted for by the importer.

The new documentation practices adopted by Finland and the Republic of Ireland warrant inclusion of those countries in the IC/DV procedure. The Irish government calls its IC an "End-Use Import Certificate." The Government of Finland made changes in its Import Certificate and its Delivery Verification Certificate as part of its effort to monitor compliance by Finnish industry with the trade regulations of other countries.

This rule amends the Export Administration Regulations by adding Finland and Ireland to the list of countries that issue Import Certificates and by adding the names and addresses of Finnish and Irish authorities to the list of foreign offices that administer IC/DV systems.

**DATES:** This rule is effective (date of publication). In accordance with 15 CFR 375.9(b)(2), the requirement for submitting the Finish Import Certificate and the Irish End-Use Import Certificate with export license applications will take effect on January 4, 1988. However, applications will be accepted if supported by either a Form ITA-629P or the appropriate IC up to February 16, 1988.

**FOR FURTHER INFORMATION CONTACT:** Robert Spruell, Country Policy, Export Administration, Telephone: (202) 377-3205.

**SUPPLEMENTARY INFORMATION:**

### Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C.), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. The Import Certificate and Delivery Verification (IC/DV) requirement set forth in Part 375 supersedes the requirement for Form ITA-629P, Statement by Ultimate Consignee and Purchaser (approved by the Office of Management and Budget under control number 0625-0136) to accompany license applications for exports and reexports to Finland and Ireland. The Import Certificate and Delivery Verification are issued by the Governments of Finland and Ireland and do not constitute collection of information requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 15 CFR Parts 374 and 375

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 374 and 375 of the Export Administration Regulations (15 CFR Parts 368-399) are amended to read as follows:

1. The authority citations for 15 CFR Parts 374 and 375 continue to read as follows:

**Authority:** Pub. L. 96-72, 93 Stat 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, and by Pub. L. 99-64 of July 12, 1985; and E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

## PART 374—[AMENDED]

### § 374.3 [Amended]

2. In § 374.3, paragraph (c)(1)(ii) is amended by adding the words ", a Finnish Import Certificate, an Irish End-Use Import Certificate" between the words "a Singapore Import and Delivery Verification Certificate" and "or an Indian Import License" in the second sentence.

## PART 375—[AMENDED]

### § 375.1 [Amended]

3. The table in § 375.1 is amended by adding "Finland," between "Federal Republic of Germany," and "France," and by adding "Ireland, Republic of," between "Hong Kong," and "Italy," under the column titled "and the country of destination is:".

4. In § 375.3, paragraphs (b) and (c)(1) are revised to read as follows:

### §375.3 International import certificate and delivery verification certificate.

* * * * *

(b) *Destinations.* The following country destinations are subject to the International Import Certificate/Delivery Verification Certificate System requirements.[1]

Austria
Belgium
Denmark
Finland
France
Germany, Federal Republic of (including West Berlin)
Greece
Hong Kong (see § 375.3(c)(3) of this section)
Ireland, Republic of
Italy
Japan
Luxembourg
Netherlands
Norway
Portugal
Singapore
Spain
Turkey
United Kingdom

(See Supplement No. 1 to this Part 375 for the list of addresses in the above country destinations where foreign importers may obtain International Import Certificates.) The provisions of this § 375.3 do not apply to any overseas territories of the above destinations unless specifically listed.

(c) *Documentation provisions*—(1) *Terms used.* As used in this § 375.3, the terms "International Import Certificate," "Delivery Verification Certificate," "Entrance Verification Certificate," "Hong Kong Import License," "Irish End-Use Import Certificate," "Landing Certificate," and "Singapore Import and Delivery Verification Certificate," refer to the documents issued by governments of the countries listed in § 375.3(b) above to importers in such countries and are equivalent documents for Form ITA-645P/ATF-4522/DSP-53, International Import Certificate, and Form ITA-647P, U.S. Delivery Verification Certificate issued to U.S. importers (see §§ 368.2 and 368.3).

* * * * *

### Supplement No. 1—[Amended]

5. Supplement No. 1 to Part 375 is amended by inserting the following information in alphabetical order by country:

A. Under the column heading "Country", insert "Finland" and "Ireland, Republic of";

B. Under the column heading "IC/DV Authorities", insert "Hensingin Piiritullikamari, Kanavakatu 6 (or P.O. Box 168) 00161 Helsinki" opposite "Finland" and "Department of Industry, Trade, Commerce and Tourism, Frederick House, South Frederick Street, Dublin 2" opposite "Ireland".

C. Under the column heading "System administered", insert "IC/DV" for both Finland and Ireland.

Dated: November 13, 1987.

**Vincent F. DeCain,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 87-26569 Filed 11-17-87;8:45am]

BILLING CODE 3510-DT-M

[1] See §375.4 for Swiss Blue Import Certificate requirements, § 375.5 for Yugoslav End-Use Certificate requirements, § 375.6 for People's Republic of China End-Use Certificate requirements, and § 375.7 for Indian Import License requirements.

## DEPARTMENT OF THE TREASURY

## Bureau of Alcohol, Tobacco and Firearms

## 27 CFR Part 9

**[T.D. ATF-261; Notice No. 632]**

## Sierra Foothills Viticultural Area

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Treasury decision, final rule.

**SUMMARY:** This final rule establishes in the foothills of the Sierra Nevadas in north-central California an American viticultural area known by the appellation "Sierra Foothills."

The use of the name of an approved viticultural area as an appellation of origin in the labeling and advertising of wine allows the proprietor of a winery to designate the area as the locale in which grapes used in the production of a wine are grown and enables the consumer to identify and to differentiate between that wine and other wines offered at retail.

**EFFECTIVE DATE:** December 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Breen, Coordinator, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, Room 6237, Washington, DC 20226, Telephone: (202) 566-7626.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in Title 27, Code of Federal Regulations, Part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added to Title 27 a new Part 9 providing for the listing of approved American viticultural areas.

Section 4.25a(e)(1) of Title 27, Code of Federal Regulations, Part 4, defines an American viticultural area as a delimited grape growing region distinguishable by geographical features. Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition shall include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundary of the proposed viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and,

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundary prominently marked.

**Petition**

By letter dated July 8, 1985, the Sierra Foothills Winery Association of Somerset, California, filed a petition for the establishment of a "Sierra Foothills" viticultural area in portions of the counties of Nevada, Placer, El Dorado, Amador, Calaveras, Tuolumne and Mariposa.

The petition covered portions of seven of the twelve California counties which lie in the foothills "belt" of the Sierra Nevadas, an interior range that extends about 360 miles in a northwest to southeast orientation from Mt. Lassen to Walker Pass near Bakersfield. The petitioned area is approximately 160 miles long and lies 40 miles to the east of Sacramento.

**Notice of Proposed Rulemaking**

After reviewing the petition and additional data requested from the petitioner, ATF proposed in Notice No. 632, published in the **Federal Register** of May 26, 1987 (52 FR 19531), that the northern leg of the boundary for the petitioned area be extended to include the foothills in Yuba County, thereby increasing the length of the viticultural area to 170 miles. In the "Public Participation" section of the preamble to Notice No. 632, ATF sought comment regarding this revision of the boundary as well as additional documentation to support the inclusion of Mariposa County, the southernmost county of the eight counties listed in the proposal.

**Public Comment**

During a 60-day comment period which closed on July 27, 1987, ATF received four comments to Notice No. 632. Three commenters supported the proposal; one commenter opposed the inclusion of the foothills of Yuba County within the boundary of the proposed viticultural area.

*Comment No. 1:* George P. Radanovich, proprietor of Radanovich Vineyards and Winery, presently the only bonded winery in Mariposa County, expressed support for the inclusion of the portion of Mariposa County as proposed in the notice and stated that wine grapes were first planted in this county in 1982.

*Comment No. 2:* Mr. James R. Bryant, an officer of Renaissance Vineyard & Winery, Incorporated, and the petitioner for the North Yuba viticultural area which ATF established in 1985 in the middle and upper foothills of Yuba County, California, opposed ATF's proposal to include the foothills land in Yuba County. Mr. Bryant expressed the concern that the establishment of "one catch-all viticultural area * * * would only serve to diminish the value of the designation of specific areas." Mr. Bryant based his objection on the beliefs that Yuba County lacks recognition as being a part of the "Sierra Foothills" appellation and has physical features which are distinct from the other seven counties.

*Comment No. 3:* The third comment was filed by Michael F. McCartney of Fremont, California, "a consumer and amateur winemaker who has followed the Sierra Foothills as a wine growing area since the middle 1960's." Writing in support of the proposal, Mr. McCartney notes that "the appellation is long overdue for an area with a distinct viticultural history, climate, geology and soils, which produces wines quite distinct from the Central Valley." This commenter supports the proposed boundary and, specifically, "ATF's northern extension to include the North Yuba area." Mr. McCartney notes that "the Sierra Foothills appellation should be more of an inclusive 'umbrella,' similar to North Coast or Central Coast."

*Comment No. 4:* The fourth comment was filed by Alan L. Ghirardelli, of Linden, California. Mr. Ghirardelli's family has owned and operated a winegrape vineyard in Calaveras County for nearly 90 years. Mr. Ghirardelli expressed full support for the proposal and hoped that "consideration would be given to designating more localized appellations within the Sierra Foothills area."

**Consideration of Comments**

*North Leg of Boundary*

With regard to the proposal to include the foothills in Yuba County in the Sierra Foothills viticultural area, ATF notes that although none of the groupings by the various entities cited in the petition and in the comment by Mr. Bryant includes Yuba County in the appellation "Sierra Foothills", no two can agree as to which grouping of counties represents the "Sierra Foothills" region. For example, Mr. Bryant cited a tour guide which placed Modoc County under this appellation in spite of the fact that Modoc County lies 55 miles north of Mt. Lassen which is considered to be the northern terminus of the Sierra Nevadas.

ATF attributes the omission of the foothills in Yuba County from the petition to the fact that the reestablishment of viticulture in the foothills of Yuba County is a relatively recent event. Although wine grapes were planted in the foothills of Yuba County in the 1850's and 1,000 acres were dedicated to wine grapes by 1930, as a consequence of National Prohibition, the vineyards were replaced by orchards of peaches and prunes. After repeal in the mid-1930's, wine grape growing resurged in the valley lowlands. The viticulture in Yuba County has been associated with the Sacramento Valley because from the mid-1930's to the early 1980's wine grapes were not being cultivated in the foothills of Yuba County.

Mr. Bryant's objections to the inclusion of the foothills of Yuba County within the boundary of the proposed Sierra Foothills viticultural area are based upon the belief that the foothills in Yuba County lack recognition as being a part of the Sierra Foothills and have physical features which are distinct from those of the seven other Sierra Foothills counties. ATF, in applying the criteria prescribed in § 4.25a(e)(2), finds that the foothills of Yuba County are known as being part of the same Sierra Foothills which are contained in the seven other counties in the proposed area. Further, ATF finds that the foothills in Yuba County share the same history with the seven other counties and that the physical features of the Sierra Foothills, i.e., soils, climate, topography, etc., clearly show the extension of the Sierra Foothills as far north as Yuba County.

The "Sierra Foothills" petition covers land as low in elevation as 500 feet above sea level, e.g., Jackson Valley and Auburn Ravine, and land as high in elevation as 3,500 feet above sea level in Mariposa County. In comparison with the North Yuba viticultural area which ranges in elevation from 1,000 to 2,000 feet above sea level, the Sierra Foothills viticultural area fully encompasses the range in elevation for the North Yuba viticultural area.

ATF, therefore, finds that in applying the criteria prescribed in § 4.25a(e)(2), the foothills of Yuba County should be included within the boundary of the new Sierra Foothills viticultural area.

*South Leg of Boundary*

The data furnished by the petitioner supports the inclusion of some portion of Mariposa County in the Sierra Foothills viticultural area. Due to its topography, specifically, a more rapid transition in elevation from the lowlands of the Sacramento Valley to the uplands in Sierra National Forest and discontinuous "poolings" of foothills soils, the foothills "belt" in Mariposa County is more compressed and lacks the continuity of soils common to the foothills of the other seven counties.

During the comment period, ATF sought additional data to support the

inclusion of the portion of Mariposa County proposed in Notice No. 632 within the Sierra Foothills boundary.

Based upon a review of the entire record, ATF finds that in applying the criteria prescribed in § 4.25a(e)(2), the foothills of Mariposa County should also be included in the proposed viticultural area and that the southern extension of the foothills of Mariposa County adequately defines the southernmost leg of the boundary of the Sierra Foothills viticultural area. Although there is a break in the continuity of foothills soils within Mariposa County, ATF finds that the foothills in Mariposa County have physical features, including soils, which are generally similar to those of the seven other more northerly counties proposed in the notice. These findings are also based on the fact that the foothills in Mariposa County, as discussed in the notice, are a southerly extension of the same Sierra Foothills contained in the seven other counties in the proposed area and that all eight counties share a common history.

**Final Rule**

The boundary of the Sierra Foothills viticultural area, as proposed by ATF in Notice No. 632 and retained in this final rule, encompasses the foothills "belt" of the Sierra Nevadas in the eight counties of Yuba, Nevada, Placer, El Dorado, Amador, Calaveras, Tuolumne and Mariposa in the State of California. The viticultural area includes the lower, middle and upper foothills in the foothills "belt", a region that narrows to the northwest in Yuba County and to the southeast in Mariposa County.

The boundary of the viticultural area encompasses approximately 4,200 square miles of 2.6 million acres. The length is approximately 170 miles from Yuba County to Mariposa County.

Within the area there are approximately 150 vineyards totaling 3,000 acres planted in wind grapes, 35 premises registered for the production of wine and the approved American viticultural areas of "North Yuba", "El Dorado", "California Shenandoah Valley" and "Fiddletown."

**Distinguishing Characteristics**

The characteristics which distinguish the Sierra Foothills viticultural area from surrounding areas are discussed at length in the preamble of Notice No. 632 but are summarized as follows:

(1) Name (viticulture found geographically in the foothills "belt" of the Sierra Nevadas);

(2) History (origins dating to the Gold Rush of 1849);

(3) Geology, topography, elevation and soils (the region is part of the Sierra Nevada geomorphic province, with different geology and soils than the Great Valley province and the High Sierras); and,

(4) Climate, rainfall and temperature (the region has warm summer days and cool nights, with lower temperatures and higher rainfall than the Central Valley and higher temperatures and lower rainfall than the mountainous uplands of the Sierra Nevadas).

**Boundary**

The boundary of the Sierra Foothills viticultural area may be found on four United States Geological Survey maps scale 1:250,000. The boundary is described in § 9.120.

**Miscellaneous**

With the publication of this final rule, ATF recognizes the Sierra Foothills viticultural area as being distinct from neighboring and other areas. However, this action is not an endorsement of the quality of wines produced from grapes grown in this area and any commercial advantage gained by wine producers comes only through consumer acceptance of such wines in the marketplace.

**Executive Order 12291**

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable since this final rule witll not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

**Drafting Information**

The author of this document is Michael J. Breen, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects in 27 CFR Part 9**

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

**Authority**

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

**Paragraph 1.** The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

**Par. 2.** The Table of Contents in Subpart C is amended to add the title of § 9.120 to read as follows:

**Subpart C—Approved American Viticultural Areas**

Sec.

* * * * *

9.120 Sierra Foothills.

**Par. 3.** Subpart C is amended by adding § 9.120. As amended, Subpart C reads as follows:

## Subpart C—Approved American Viticultural Areas

* * * * *

**§ 9.120 Sierra Foothills.**

(a) *Name.* The name of the viticultural area described in this section is "Sierra Foothills."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Sierra Foothills viticultural area are four U.S.G.S. topographical maps of the 1:250,000 scale:

(1) "Chico" (NJ 10–3), edition of 1958, revised 1970.

(2) "Sacramento" (NJ 10–6), edition of 1957 revised 1970.

(3) "San Jose" (NJ 10–9), edition of 1962, revised 1969.

(4) "Mariposa" (NJ 11-7), edition of 1957, revised 1970.

(c) *Boundary.* The Sierra Foothills viticultural area is located in portions of the counties of Yuba, Nevada, Placer, El Dorado, Amador, Calaveras, Tuolumne and Mariposa, in the State of California. The boundary is as follows:

(1) Beginning on the "Chico" map at the point of intersection of the north border of T(ownship) 18 N(orth), R(ange) 6 E(ast), with S. Honcut Creek the boundary proceeds approximately 3.5 miles, in a generally south and southwesterly direction, along the eastern bank of S. Honcut Creek to the point where S. Honcut Creek meets the western border of T. 18 N., R. 6 E.;

(2) Then south, approximately 15 miles, along the western borders of T. 18 N., T. 17 N., and T. 16 N. in R. 6 E., to the point where the western border of T. 16 N., R. 6 E. meets the northernmost perimeter of Beale Air Force Base in the southwestern corner of T. 16 N., R. 6 E.;

(3) Then east, south and west along the perimeter of Beale Air Force Base to the point where the perimeter of Beale Air Force Base intersects the western border of R. 7 E. in T. 14 N.;

(4) Then south, approximately 24 miles, along the western borders of T. 14 N., T. 13 N., T. 12 N., and T. 11 N. in R. 7 E., to the southwestern corner of T. 11 N., R. 7 E. (see "Sacramento" map);

(5) Then east, approximately six miles, along the south border of T. 11 N., R. 7 E., to the southeastern corner of T. 11 N., R. 7 E.;

(6) Then in a south southeasterly direction, in a straight line, approximately three miles, to the northeasternmost corner of Sacramento County in T. 10 N., R. 8 E.;

(7) Then continuing in a south southeasterly direction, in a straight line, along the Sacramento County—El Dorado County line, approximately 15 miles, to the point where the county line meets the Cosumnes River in the southwestern corner of T. 8 N., R. 9 E.;

(8) Then south, in a straight line, approximately 14.1 miles, along the Sacramento County—Amador County line, to the point where the county line meets Dry Creek in the northwestern corner of T. 5 N., R. 9 E.;

(9) Then in a south southeasterly direction, in a stright line, approximately 5.4 miles. along the San Joaquin County—Amador County line, to the point where the Mokelumne River forms the Amador County—Calaveras County line in T. 4 N., R. 9 E.;

(10) Then continuing in a south southeasterly direction, in a straight line, approximately 10.4 miles, along the San Joaquin County-Calaveras County line, to the point where the power line meets the western border of T. 3 N., R. 10 E.;

(11) Then in a southeasterly direction, in a straight line, approximately 22.4 miles, along the Calaveras County-Stanislaus County line to the point where the county line meets the Stanislaus River in T. 1 S., R. 12 E. (see "San Jose" map);

(12) Then in a southeasterly direction, in a straight line, approximately 20 miles, along the Tuolumne County-Stanislaus County line to the point where the county lines of Tuolumne, Mariposa, Stanislaus and Merced counties meet in the southeast corner of T. 3 S., R. 14 E.;

(13) Then continuing along the Mariposa County-Merced County line in a generally southeasterly direction, approximately 37 miles, to the point where the county lines of Mariposa, Merced and Madera counties meet in the northwestern corner of T. 9 S, R. 18 E.;

(14) Then northeasterly in a straight line, approximately 23 miles, along the Mariposa County-Merced County line to the point, approximately one mile west of Miami Mountain, where the Mariposa County-Merced County line meets the western border of the boundary of the Sierra National Forest in T. 6S, R. 20 E. (see "Mariposa" map);

(15) Then in a generally northerly and westerly direction, along the western borders of the Sierra and Stanislaus National Forests in Mariposa County (see "San Jose" map);

(16) Then in a generally northerly and westerly direction, along the western border of the Stanislaus National Forest in Tuolumne County (see "Sacramento" map);

(17) Then in a generally northerly and westerly direction, along the western border of the Stanislaus National Forest in Calaveras and Amador counties;

(18) Then in a generally northerly and westerly direction, along the western border of the El Dorado National Forest in Amador, El Dorado and Placer counties (see "Chico" map);

(19) Then in a generally northerly and westerly direction, along the western border of the Tahoe National Forest in Placer, Nevada and Yuba counties to the point south of Ruef Hill where the western border of the Tahoe National Forest intersects the northeast corner of T. 18 N., R. 6 E.;

(20) Then west, approximately five miles, along the north border of T. 18 N., R. 6 E., to the point of beginning.

Signed: October 2, 1987.

**W. T. Drake,**

*Acting Director.*

Approved: October 30, 1987.

**John P. Simpson,**

*Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement).*

[FR Doc. 87-26535 Filed 11-17-87; 8:45 am]

BILLING CODE 4810-31-M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD7-87-18]**

## Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, South Carolina

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** At the request of the South Carolina Department of Highways and Public Transportation, the Coast Guard is modifying regulations governing the Lady's Island drawbridge at Beaufort by permitting the number of openings to be limited during certain periods. This change is being made because of complaints about highway traffic delays. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

**EFFECTIVE DATE:** These regulations become effective on December 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walt Paskowsky, telephone (305) 536-4103.

**SUPPLEMENTARY INFORMATION:** On July 27, 1987, the Coast Guard published proposed rule (52 FR 28018) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated August 10, 1987. In each notice, interested persons were given until September 10, 1987, to submit comments.

### Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

### Discussion of Comments

Seventeen comments were received. All supported some version of the original proposal of the highway department to close the bridge to navigation from 7 a.m. to 9 a.m. and 4

p.m. to 6 p.m. and to open the bridge at 20 minute intervals from 9 a.m. to 4 p.m. Monday through Saturday year round. Bridgetender logs show the bridge opens an average of less than once per hour with a high percentage of these openings for tugs with tows and Government vessels which are exempt from closure restrictions. Requiring all other vessels transiting the Intracoastal Waterway to wait up to two hours for passage is considered unduly restrictive and not justified by available waterway and highway traffic data. The comments received provided no additional information upon which to change our recommendation. We believe the proposed rule is a reasonable compromise between the original request from the highway department and the needs of navigation on the Intracoastal Waterway. The final regulation is unchanged from the proposed rule published on July 27, 1987.

**Economic Assessment and Certification**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.911(f) is revised to read as follows:

**§ 117.911 Atlantic Intracoastal Waterway from Little River to Savannah River.**

* * * * *

(f) *Lady's Island bridge, across the Beaufort River, mile 536.0 at Beaufort.* The draw shall open on signal, except that from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Saturday, except Federal holidays, the draw need open only on the hour. During the months of April, May, June, September, October and November, from 9 a.m. to 4 p.m., Monday through Saturday, except Federal holidays, the draw need open only on the hour, 20 minutes after the hour and 40 minutes after the hour.

Dated: November 2, 1987.

**H.B. Thorsen,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 87–26609 Filed 11–17–87; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 165**

**[CGD3–86–56]**

## Security Zone; New London Harbor, CT, Boundary Correction

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** Coast Guard is correcting an error in the description of the boundary for security zone "A" New London Harbor which appeared in the **Federal Register** on May 7, 1987 (52 FR 17295).

**FOR FURTHER INFORMATION CONTACT:** LCDR James Rutkovsky at (203) 442–4471.

**SUPPLEMENTARY INFORMATION:** The Coast Guard promulgated regulations on May 7, 1987 (52 FR 17295) enlarging security zone "A" in the Thames River, New London Harbor, CT. An error in the description of the boundary is corrected by this notice.

In rule document 87–10395 beginning on page 17295 in the issue of Thursday, May 7, 1987, make the following correction:

**§ 165.302 [Corrected]**

On page 17296, at § 165.302(a)(1) line 9, change "41 21′ 42″ N" to read "41 21′ 43.5″ N."

Dated: November 13, 1987.

**T.H. Collins,**

*Commander, U.S. Coast Guard, Captain of the Port, New Haven, Connecticut.*

[FR Doc. 87–26612 Filed 11–17–87; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 165**

**[COTP Port Arthur, Texas Reg. 87–04]**

## Security Zone Regulations; Port of Beaumont, TX, and Sabine Neches Waterway

**AGENCY:** Coast Guard, DOT.

**ACTION:** Emergency rule.

**SUMMARY:** The Coast Guard is establishing a Security Zone within the Port of Beaumont and around the vessels USNS CAPELLA and USNS POLLUX. The zone is needed to safeguard the port and the vessels from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into this Security Zone is prohibited unless authorized by the Coast Guard Captain of the Port.

**EFFECTIVE DATE:** This regulation becomes effective on 26 October 1987. It terminates on 26 November 1987 or unless sooner terminated by the Coast Guard Captain of the Port.

**FOR FURTHER INFORMATION CONTACT:** Commander J. L. Robinson at (409) 724–4343.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to safeguard the port and attending vessels.

**Drafting Information**

The drafters of this regulation are LCDR B. J. Lambert, Project Officer for the Coast Guard Captain of the Port, and LCDR J. J. Vallone, Project Attorney, Eighth Coast Guard District Legal Office.

**Discussion of Regulation**

The evolution requiring this regulation will begin on or about 26 October 1987. Establishing this Security Zone is essential to facilitating REFORGER 87, a joint service military operation which includes a military equipment offload through the Port of Beaumont, Texas. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Regulation**

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

## PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T843 is added to read as follows:

**§ 165.T843 Security Zone: Port of Beaumont, Texas and Sabine Neches Waterway in the vicinity of the USNS vessels CAPELLA and POLLUX.**

(a) *Location.* The following area is a Security Zone: Port of Beaumont within its fenced limited access perimeter, the Neches River immediately adjacent to this area and 2 miles ahead and 1 mile behind these vessels as they transit the Sabine Neches Waterway.

(b) *Effective Date.* This regulation becomes effective on 26 October 1987. It terminates on 26 November 1987 or unless sooner terminated by the Coast Guard Captain of the Port.

(c) *Regulations:* (1) In accordance with the general regulations in Part 165.23, entry into this Security Zone is prohibited unless authorized by the Coast Guard Captain of the Port.

Dated: October 20, 1987.

**T. G. McKinna,**

*Captain, USCG, Captain of the Port, Port Arthur, Texas.*

[FR Doc. 87–26611 Filed 11–7–87; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF DEFENSE

### Corps of Engineers, Department of the Army

### 33 CFR Part 240

**[ER 1165–2–29]**

### Water Resources Policies and Authorities; General Credit for Flood Control

**AGENCY:** Army Corps of Engineers, DOD.

**ACTION:** Final rule.

**SUMMARY:** This regulation provides guidelines and procedures for application of the provisions of section 104 of Pub. L. 99–662. Those provisions deal, primarily, with the giving of credit, for flood control works accomplished by non-Federal interests, toward local cooperation that would otherwise be required in connection with a related Federal flood control project authorized to be implemented by the Corps of Engineers.

**EFFECTIVE DATE:** November 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** David Brouwer or Don Rogers at (202) 272–0123.

**SUPPLEMENTARY INFORMATION:**

**Background**

Subsection 104(a) of Pub. L. 99–662 specifies that the guidelines to carry out the provisions of section 104 shall be promulgated after notice in the **Federal Registger** and opportunity for comment.

A Notice of Proposed Rule Making (NPRM) regarding this rule was published in the **Federal Register** of Wednesday, June 24, 1987 (52 FR 23687).This contained the complete text of the proposed Engineer Regulation to be issued by the Corps of Engineers to promulgate the guidelines under which the provisions of section 104 will be carried out, and afforded a sixty-day period for public comment.

**Discussion of Comments to the NPRM**

Fourteen non-Federal commenters responded to the NPRM. A letter was also received, after the period provided for comment, from the United States Department of the Interior. Summarized comments and responses are:

*Comment #1:* Four comments, referenced to 240.4 and 240.6(e), urged that the guidelines make provision for allowing credit, against the project sponsor's responsibilities for local cooperation, for the costs for compatible works accomplished by non-Federal interests, sponsor or otherwise.

*Response:* In the final rule, additional language has been incorporated in 240.6(e) to cover the point.

*Comment #2:* Two comments, referenced to 240.4, questioned whether the statement that credit will not relieve the project sponsor of the 5 percent cash contribution requirement means 5 percent of total project costs or 5 percent of the annual amount of construction appropriations.

*Response:* It means 5 percent of total project costs. The details of timing for provision of required cash contributions within the period of project construction are not covered in these guidelines—they are determined for each project as part of the negotiations for the related local cooperation agreement.

*Comment #3:* One comment, referenced to 240.4, urged that the guidelines contain the language of section 104(b) allowing credits for local funds spent five years before the first obligation of Federal funds for the reconnaissance study for a project.

*Response:* The commenter assumed that this language was applicable to a project now authorized, but this is incorrect. For projects now authorized the credit limitation is set by the language of 104(c) and 104(d). The language in 104(b) relates to proposed projects and, further, only to the costs and benefits for past local works that may be added to the economic analysis of the proposed project—not to the costs that may be credited. Credit in connection with proposed projects is set by 104(c)—only for local works undertaken after the end of the reconnaissance study. New language has been incorporated in 240.8(b) to explicitly state this limitation.

*Comment #4:* Two comments, referenced to 240.5, stated the commenters' understanding that Congress intended that credit be given for interim protection measures undertaken by local interests.

*Response:* The costs for interim measures, to the extent such measures may be found compatible in accordance with the guidelines, are eligible for credit consideration.

*Comment #5:* One comment, referenced to 240.6, urged that the guidelines be modified to make clear that coastal storm damage reduction projects are eligible for section 104 credit consideration.

*Response:* We believe that it was clearly the Congressional intent that the provisions of section 104 were to apply, in the absence of specific exception, solely to flood control projects (so identified in the authorization process) and flood control cost sharing requirements. For several projects authorized in Pub. L. 99–662, not characterized as flood control projects, the authorization language made the section 104 provisions specifically applicable to them. Language has been incorporated in 204.6(a) to establish that, other than for such specifically authorized Congressional exceptions, section 104 is applicable only to authorized "flood control" projects.

*Comment #6:* Two comments, referenced to 240.6(b), noted that this paragraph refers only to structures and may be interpreted to exclude nonstructural measures from credit consideration.

*Response:* Nonstructural flood control measures, to the extent such measures may be found compatible in accordance with the guidelines, are eligible for credit consideration. The 240.6(b) wording has been modified to remove any implication that only structural measures would qualify.

*Comment #7:* One comment, referenced to 240.6(c)(1), argued that there may indeed be circumstances where non-Federal interests would want to proceed with work which would be a useful part of a flood control project but had not useful purpose of its own until the project was undertaken, and they should not be denied credit for such

work if the flood control project, in fact, were ultimately implemented.

*Response:* The basic intent of 240.6(c) as proposed in the NPRM was to avoid circumstances where non-Federal interests would have made an unwise investment decision if it turned out the Federal flood control project was never implemented. We agree, however, that they should receive credit consideration in the circumstances envisioned by the commenter. The language has been modified to preserve the cautionary intent but to not absolutely foreclose the possibility of credit.

*Comment #8:* Two comments, referenced to 240.6(d) and 240.7, stated that non-Federal interests should receive credit for compatible work done between the date of Pub. L. 99–662 and the effective date of these guidelines.

*Response:* The provisions of section 104 do not specifically provide for crediting of compatible work accomplished in this period, and additional language has been inserted in 240.4 to so indicate. The guidelines are written, however, to allow credit to be given for compatible work accomplished after the date of the Act that is a continuation of work started prior to that date. For new work on authorized projects started after that date, non-Federal interests could be allowed credit under the provisions of section 215 of the Flood Control Act of 1968, but not under the provisions of section 104, Pub. L. 99–662. The sentence in 240.6(d) of the NPRM which incorrectly indicated that section 104 credit might be allowed for new work on an authorized project initiated after 17 November 1986 and before the effective date of this regulation has been deleted from the final rule. Language has been added to 240.8(b) under which, for projects not yet authorized, credit consideration can be given to new work initiated in this period.

*Comment #9:* Two commenters made eight comments, referenced to 240.6(e), 240.6(f), 240.6 (i) and (j), and 240.7(c), indicating the definition of compatible work should make clear that such "work" includes lands, easements, rights-of-way, relocations and disposal areas (LERRD). Another commenter indicated the definition should encompass appraisals, acquisition uniform relocation payments, cultural investigations and mitigations and environmental mitigation as well as construction.

*Response:* An additional sentence has been added in 240.6(e) to indicate that, where flood control measures undertaken by non-Federal interests can be construed as compatible, the related costs eligible for credit consideration include all costs required for implementation of those measures, including LERRD, etc.

*Comment #10:* Two comments, referenced to 240.6(e), stated that expenditures, as referred to in this paragraph, should include the value of any compatible works accomplished by non-Federal interests using their own forces and resources for which "costs" might not necessarily be recorded.

*Response:* We concur and have added language providing for estimating values for such efforts.

*Comment #11:* One comment, referenced to 240.6(e), questioned whether "Community Development Block Grant" monies can be used to meet the non-Federal cost sharing requirements for Corps of Engineers flood control projects.

*Response:* Sufficient detail is not available for authoritative determination. Generally, if the Federal grantor finds this to be an acceptable use of its grant then it is acceptable to the Corps of Engineers also. In each specific case a specific determination will be made.

*Comment #12:* One comment, referenced to 240.6(e), argued that eligible activities of non-Federal interests that result in reduction of overall project costs to the Corps should be credited to the local share of costs—no matter where the funds originated.

*Response:* We do not concur. It is necessary, whether there is a credit that can be applied or not, to preserve the legislatively required Federal/non-Federal sharing of project costs. Substituting other Federal funds (with the exception of the eligible grants referenced in the response to Comment #11) for project funding that should be a local responsibility defeats this.

*Comment #13:* One comment, referenced to 240.6(e), argued that credit for compatible work accomplished in advance of Federal project implementation should be based on its current "value" at the time Federal investments are made.

*Response:* We do not concur. Credit for compatible work will be given only on the basis of recorded expenditures or equivalent estimates. In connection with lands in the ownership of the project sponsor and made available for project construction, the current value of those lands when they are made available will be used in calculating the related sponsor contribution toward LERRD (this is not a section 104 credit matter, but is mentioned here to prevent any misunderstanding).

*Comment #14:* One comment, referenced to 240.6(e), indicated concern that operations and maintenance (O&M) costs, which the commenter considered integral to total non-Federal costs for compatible work, were not eligible for credit.

*Response:* Non-Federal O&M costs in connection with completed compatible work are not creditable against non-Federal cost sharing requirements for a Federal project because O&M is entirely the sponsor's responsibility, whether for the flood control project as authorized or as enlarged by the addition of external compatible work.

*Comment #15:* One comment, referenced to 240.6(f), stated that costs for compatible works which are in excess of creditable project costs, should be creditable against local costs for Federal dam safety requirements in excess of state requirements.

*Response:* The law has no provisions for crediting non-Federal interests against anything but "flood control" project costs. Costs for upgrading existing dam structures so that they meet acceptable safety standards are for meeting responsibilities separate from flood control projects.

*Comment #16:* Two comments, referenced to 240.6(g), indicated that the 50 percent reimbursement rule when applied in conjunction with the credits rule needs clarification.

*Response:* We believe 240.6(g) is clear. The point is: non-Federal interests are entitled to no reimbursement for compatible work in excess of the amount that can be credited. Anticipating that, potentially, this could be misunderstood in some situations where the provisions of section 103(a)(3) of Pub. L. 99–662 might be thought applicable, 240.6(g) contains special mention of this. Section 103(a)(3) provides that if non-Federal costs for required local cooperation for a flood control project should exceed 50 percent of total project costs, the sponsor is entitled to reimbursement for the amount over that percentage. It must be understood that this rule is triggered by the value of required local cooperation, not by total non-Federal contributions toward the project if these should exceed the value of required local cooperation. If the value of excess (non-creditable) compatible work, when added to the value of required local cooperation, should result in non-Federal interests having borne more than 50 percent of project costs, this will not create entitlement for reimbursement of the amount over 50 percent that is traceable to non-creditable compatible work.

*Comment #17:* Two comments, referenced to 240.6(h), argued that costs for locally-prepared environmental

impact statements (EISs) should be creditable.

*Response:* If non-Federal interests had to prepare an EIS as a prerequisite to undertaking works which are determined to be compatible, the EIS costs may be included in the total cost for the compatible works considered for credit. The revised wording in 240.6(e) encompasses this.

*Comment #18:* One commenter indicated lack of understanding of 240.6(i) in view of the prohibition, under section 104, against credit for works accomplished prior to 17 November 1981.

*Response:* The value of LERRD required for the authorized project and provided by the sponsor will be recognized as part of the sponsor's contribution toward local cooperation requirements even if done far in advance of project implementation efforts of the Corps of Engineers. (Corps real estate practice does limit, to 5 years, the retroactive period for which acquisition expenses may be included.) This is simply fair accounting for fulfillment of required responsibilities. This has nothing to do with the credit provisions of section 104, but is mentioned in 240.6(i) to make clear that this is a separate consideration.

*Comment #19:* One comment, referenced to 240.6(i), indicated that this paragraph should include demolition of any structures and clearing the land, without prior approval from the Corps.

*Response:* Current Corps real estate practice does not provide for inclusion of demolition or clearing costs as part of land valuations. However, such efforts as may be accomplished by non-Federal interests, if they meet the compatibility test, may be credited under the terms of section 104.

*Comment #20:* Two comments, referenced to 240.7(a), stated that a clearer definition of what constitutes integral versus external work should be provided; no definition is given in the appendix on Formulas for Determining Amount of Allowable Credit."

*Response:* Further definition is not required in the appendix. Where the two kinds of compatible work are addressed in the appendix there are cross references to the relevant paragraph of the guidelines—240.7(a). Although the descriptors in 240.7(a) are not characterized as definitions of integral and external work, they do define them in the simplest possible terms with, consequently, the least possibility of misinterpretation in characterization. A minor addition to the descriptor for integral work has been made.

*Comment #21:* Two comments, referenced to 240.7(a), recommended that the trigger percent for requiring project reauthorization be raised from 20 percent to 50 percent.

*Response:* The origin of the 20 percent figure used in the NPRM is section 902 of Pub. L. 99–662 and would not, therefore, be subject to Corps amendment. In any event, after further consideration the related part of 240.7(a) has been deleted from the final rule since it is deemed inappropriate to address interpretations of section 902 in this regulation, which is concerned solely with implementation of section 104.

*Comment #22:* One comment, referenced to 240.7(b), recommended inserting the section 104(f) sentence of Pub. L. 99–662 in this paragraph, to acknowledge that the cost limitations contained in section 215 of the Flood Control Act of 1968 are not applicable when an advance agreement on credit for compatible work is being pursued.

*Response:* We interpret section 104(f) as stating that credit under section 104 provisions for compatible work accomplished by non-Federal interests prior to authorization of the Federal project is not limited to $3 million as is credit for work accomplished subsequent to project authorization under the provisions of section 215 of the 1968 Act. We have recognized this throughout the guidelines which limit possible section 104 credits only by the magnitude of required local cooperation. Recitation of section 104(f) would serve no further purpose. We have made technical corrections to the section 215 citation in this paragraph.

*Comment #23:* One comment, referenced to 240.7(d), requested that this paragraph be broadened to cover eligible projects that fall under the provisions of section 401(b) of Pub. L. 99–662.

*Response:* It was intended that all eligible projects authorized in Pub. L. 99–662 specifically subject to the provisions of 903(a) or 903(b) or generally subject to similar provisions be covered by this paragraph. This includes projects authorized in section 601(b) as well as in 401(b). Additional wording has been inserted in 240.7(d) to establish this.

*Comment #24:* One comment, referenced to 240.8(a), argued that the requirement that, for projects authorized after November 17, 1986, work eligible for credit must be explicitly addressed in recommendations to Congress is unduly restrictive.

*Response:* Paragraph 240.8(a) provides that, in general, this is required. This is relative to compatible works accomplished by non-Federal interests after completion of the Corps reconnaissance report and prior to completion of the final report of the District Engineer. However, flexibility to give credit consideration to subsequent compatible works undertaken by non-Federal interests prior to project authorization is provided both by the second sentence of 240.8(a) and paragraph 240.8(c).

*Comment #25:* Two comments, referenced to 240.9(a), noting that this paragraph pertains to "planned work" (i.e. future work), questioned what additional procedures must be followed in connection with non-Federal work completed prior to November 17, 1986, for which credit applications were submitted prior to March 31, 1987, as required by the law.

*Response:* Work undertaken prior to November 17, 1986, did not require prior approval in order to establish eligibility for credit, hence refined procedures for dealing with these cases are unnecessary. For the NPRM it was considered that specific provisions in the guidelines should not be required and that the language in section 104(d) of the law, by itself, should suffice. (In looking ahead, it was recognized that disposition of credit requests for the past works would be a one-time exercise and that, over the long term, the guidelines would have continuing relevance only to projects authorized subsequent to November 17, 1986.) When the guidelines become effective, by publication of this final rule, the Division and District Engineers responsible for the respective Corps projects in connection with which credit applications for past works have been received will be asked for their recommendations, basing them on the provisions of the final guidelines. (Recommendations will cover eligible non-Federal works accomplished prior to November 17, 1986, and any work after that date which is a continuation of otherwise eligible work which was started before then.) If further information about the non-Federal works beyond that which accompanied the credit application is needed to support their recommendations, that further information will be requested from the project sponsor by the District Engineer. If such information is required, its provision will constitute the only additional effort needed on the part of the sponsor. The recommendations of the Division and District Engineers, when received and reviewed in the Office of the Chief of Engineers (HQUSACE), will be forwarded to the Assistant Secretary of the Army (Civil Works) for approval. When HQUSACE receives the Secretary's decision, advice will be furnished to the sponsor.

Thereafter, if credit is approved, the approved amount will be incorporated in the Corps project cost estimate and in an amendment to any existing local cooperation agreement (LCA) for the project. Paragraph 240.9(a) has been revised to touch on this process and make clear that the balance of 240.9 deals only with procedures in connection with future projects.

*Comment #26:* One comment, referenced to 240.9(a), recommended that the nature of supporting information required for the written application be clarified. The commenter was unsure whether the intent of this paragraph is to require full construction drawings or a preliminary engineering report of sufficient detail to identify the work and associated costs.

*Response:* The details of supporting information should be no greater than is reasonably needed to define the proposed work, the nature of its relationship to the authorized Federal project, its impacts, and to establish a sound estimate of costs. We do not want to stipulate an arbitrary array of requirements to be fulfilled regardless of the magnitude and complexity of the work involved in each case. The intent is not to require detailed construction drawings. Requirements will be more on the order of a preliminary engineering report mentioned as a second possibility by the commenter—but this is not to say that a formal "report" would necessarily be needed. (The District Engineer will request additional information of a specific nature if the information supplied with the application is not sufficient.)

*Comment #27:* Eight comments, referenced to either 240.9(b) or 240.9(c), stated that time limits should be suggested or set for the District Engineer's review of the credit application, for the Secretary to reach a decision after having received the Corps recommendation, or for the overall application-approval procedure or, alternatively, there should be a lesser number of reviews in the procedure.

*Response:* The procedure utilizes the customary Corps of Engineers recommendation-review-approval chain for reaching project decisions: District, Division, HQUSACE, Secretary. Credit matters will receive the same attention as do other critical project planning issues that need resolution. Other than requiring the Secretary to make determinations within 6 months of the effective date of these guidelines on past works for which credit applications were required prior to March 31, 1987, the law does not stipulate any fixed times for the other credit actions it provides for. Fixed time frames are not proposed in the final guidelines. We consider that such times frames, by creating artificial priorities for single elements of the projects implementation process, would be undesirable. As a general matter, it is in the Corps best interest, in carrying out project planning responsibilities, to resolve crediting issues as early in the planning effort as it can.

*Comment #28:* One comment, referenced to 240.9(b)(2), argued that, in those cases where a credit application is made for an element of non-Federal work which is not separable from the standpoint of providing benefits, it is inappropriate to require that an estimate of benefits be provided by the applicant.

*Response:* We concur with the commenter's point. The District Engineer in making his recommendation, however, will be required to provide information on the benefits and other impacts of the work proposed for crediting in context with the overall plan for a Federal project—if the creditable work would be an inseparable element of such a plan, then the District Engineer will provide information on overall costs and benefits with the creditable work included. The commenter misread this paragraph. It does not deal with information from the applicant but with information that must be presented by the District Engineer. Generally, although some related information may be sought from the applicant, we expect estimate of economic benefits to be developed by the District Engineer.

*Comment #29:* One comment, noting that 240.6(d) provides that, for new local work commenced after the effective date of these guidelines, only work carried out after the sponsor is notified of its compatibility and extent of potential credit pursuant to 240.9(c) shall be eligible for credit, requested indentification of the proper procedure.

*Response:* At first view, since 240.9 does identify the procedures to be followed in order to obtain credit elegibility for proposed new local work, the concern is not apparent. However, the 240.9 procedures are clearly intended to apply in connection with Federal projects that may be authorized in the future—for projects already authorized the limitations or credit that may be afforded for local works initiated after the effective date of the guidelines are established in 240.7(b). The commenter's concern is with an authorized project to which 240.7(b) applies and for which even the 240.7(b) limitations (with respect to section 215 agreements) would not be available. For such projects, the NPRM did not identify procedure for crediting local work undertaken after 17 November 1986; there is no basis, under Section 104, for any such credit. Pending completion of the relevant procedural requirements for such projects as set forth in their authorization, non-Federal interest shall bear the full risk for any related work they undertake. A possiblity for ultimately obtaining credit for the work does exist, but this is apart from section 104. It is within the Secretary's discretion, when he takes action to complete the stipulated procedural requirements for these projects, to incorporate specific provisons for credit to the extent he believes equitable. Hence, in connection with any such work in this interim period, non-Federal interests would be well advised to address a letter to the Secretary, well in advance of his action on the project and, preferably, before the non-Federal work is initiated, requesting credit consideration for that work as an element of his project determinations.

*Comment #30:* One comment, referenced to 240.9(c), stated that this paragraph appears to contradict 240.7(b). The commenter noted that 240.7(b) says that creditable work "should be undertaken under formal agreement pursuant to Section 215 * * *," whereas 240.9(c) refers only to a letter from the District Engineer to the applicant stating "what local work and costs can reasonably expected to be credited * * *"

*Response:* Paragraph 240.7(b) deals with work on an authorized project after the effective date of these guidelines. Paragraph 240.9(c) deals with work on a project under study and not yet authorized. The version of 240.9(c) in the NPRM, through error, contained wording that indicated it was also applicable to projects already authorized. The commenter's confusion is understandable. This paragraph has been revised for the final rule to eliminate the contradiction.

*Comment #31:* One comment, referenced to 240.9(c)(3), argued that expiration of the approval for creditable work at the end of three years if the work not yet started by that time, as provided in the NPRM, was unduly restrictive. The commenter noted that for some major projects it may take 10 to 15 years to complete a project and the approval provision should be flexible enough to recognize the complexity and size of some projects and avoid unnecessary biases against large-scale projects.

*Response:* We do, not consider that the magnitude of the Federal project has significant bearing on the time that should be allowed for initiation of creditable non-Federal work approved

in advance of authorization of the Federal project. For the final rule, however, 240.9(c)(3) has been revised to eliminate the three year time limit contained in NPRM and to allow the maximum practical time for initiation of the non-Federal work—with rescission of approval keyed to implementation of the Federal project by the Corps.

*Comment #32:* One comment, referenced to 240.9(d), requested modification of the guidelines so that non-Federal works for which construction plans are complete and land acquisition underway would not be subject to the advance approval procedures outlined in 240.9.

*Response:* The 240.9 procedures apply where a potential Federal project is under study, regardless of the status of any related non-Federal works. The commenter's interest, however, is in projects authorized on or before 17 November 1876. For work in connection with such authorized projects, provided an application was made prior to 31 March 1987 and the work can be determined to be compatible with the Federal project pursuant to 240.7(a), if construction plans were complete and land acquisition underway prior to 17 November 1986, the work will be considered to have been if progress as of that date and (provided the work is, in fact, subsequently accomplished) subject to credit consideration. See the response to Comment #8.

*Comment #33:* Two commenters made the general comment that the procedure requiring elevation of every credit proposal to the Secretary for approval could become a long, time-consuming process. They suggested that consideration be given to delegating some approval authority for credit to the Corps.

*Response:* We anticipate that credit determinations will be made in a timely manner, utilizing the customary Corps of Engineers recommendation-review-approval chain for reaching project decisions. See response to Comment #27. Currently we do not propose that credit approvals be delegated below the Secretarial level.

*Comment #34:* The same two commenters observed that the determination of allowable credit in many instances may require local completion of at least a portion of the preconstruction engineering and design for a Federal project. It appears that the local sponsor bears all the risk in trying to provide a more rapid response to the flood problem (rather than waiting for Federal action). Concern was expressed that, even using Federal design criteria to insure compatibility with a proposed Federal project, local interests are being put in a position of jeopardizing their money.

*Response:* Action on a local credit proposal can be taken on the basis of something less than detailed preconstruction planning and design (see response to Comment #26). If the sponsor proceeds with the compatible work for which advance approval has been given, certainly there is some risk involved. As a Federal project is not authorized at the time the credit application is made and acted upon, there can be no obsolute certainty that a project will ever be authorized, and the sponsor is required to recognize this as set forth in 240.9(c)(1). The risk ib, then, that credit for the work may not be possible, if a Federal project is not authorized and there are no local cooperation requirements to get credit against. It should be understood, however, that the costs borne by the sponsor for the local work will be the same in any event. If the local work is well conceived, local interests should receive worthwhile benefits from it even if it is not ultimately incorporated in a larger Federal project.

*Comment #35:* These commenters also observed that there is no specific provision in the guidelines to allow local interests to receive additional credit for local work that might be accomplished as a result of an unforeseen event occuring between project authorization and initiation of Federal construction of the project. They commented that this should be clarified, unless the guidelines are intended to be flexible enough to be interpreted as allowing for this.

*Response:* The law, section 104 of Pub. L. 99–662, provides for crediting of non-Federal compatible work accomplished prior to project authorization. The guidelines do not provide, and are not to be interpreted as allowing, for credit of work accomplished after project authorization except as indicated under 240.7(b). Federal participation, if any, in emergency works in the project area subsequent to project authorization will be governed by the applicability of available emergency authorities, not by the credit authority. For the final rule, additional material has been incorporated in several paragraphs to emphasize that the section 104 credit provisions apply only to local work undertaken prior to project authorization.

*Comment #36:* Two comments, referenced to the NPRM appendix, stated that the credit formulas ought to give more credit to local interests than the proposed limits of LERRD costs or 20 percent of total project cost (TPC).

*Response:* The law provides that credit may be given against the non-Federal share of the cost of an authorized project for flood control. These are the local cooperation requirements. The law also provides that credit may not be substituted for the 5 percent cash contribution which is one of the requirements. Hence, LERRD or 20 percent of TPC represent the maximum limits for credit under the law.

*Comment #37:* One commenter said the formulas in the appendix are not readily understandable; particularly, it was indicated that appendix paragraph 6, where the example is one in which credit is requested for a combination of integral and external work, is confusing.

*Response:* We have had no other indication that the formulas in the appendix were not understood by the interested reviewers. The paragraph 4 example, dealing with integral work, and the paragraph 5 example, dealing with external work, are straightforward. These two examples demonstrate the difference in impacts the two kinds of work have on TPC and, consequently, on the amount of maximum credit. The paragraph 6 example is best viewed in terms of the first two examples. After crediting the integral component, this component must be subtracted out in order to define how much remains against which external work can be credited. Before the subtraction, however, the integral credit has to be converted to the equivalent effect it would have had (the factor is 1.25) if it too had been external work.

*Comment #38:* One commenter quoted the following from paragraph 4 of the appendix: "if non-Federal interests should accomplish compatible integral or substitute work exceeding the possible credit, the Corps will be relieved of the expense of constructing an increment of the project." The commenter than observed: it appears that integral work should reduce the total costs of the project, not merely result in no increase in project costs, as discussed in this paragraph.

*Response:* The project as authorized is made up of Federal and non-Federal responsibilities. If non-Federal interests should accomplish more of the project than the authorization required, as would be the case if they accomplished more compatible integral work than there were local cooperation responsibilities to credit against, this would not affect the total project cost. The project would cost just as much to implement, but non-Federal costs would be greater than originally proposed and Federal costs correspondingly less.

*Comment #39:* The Department of the Interior (DOI), referring to 240.6(b),

indicated concern with the exclusion from credit eligibility of structures built for fish and wildlife. DOI believes that, to the extent such measures are necessary to mitigate project-induced fish and wildlife losses, credit should be allowed.

*Response:* We concur. The exclusion of fish and wildlife measures in 240.6(b) relates only to such separate measures as are separately justified in terms of enhanced fish and wildlife outputs. Mitigation measures needed because of the impacts of a flood control project are integral components of the project. To make this clearer, additional language has been inserted in 240.6(e) indicating that, where flood control measures undertaken by non-Federal interests can be construed as compatible, the related costs eligible for credit consideration include all costs required for implementation of these measures. Mitigation measures are specifically mentioned.

*Comment #40:* DOI noted that the NPRM discussed two categories of local work subject to credit: (1) Local work carried out in the 5-year period prior to 17 November 1986, and (2) local work carried out after that date. DOI asserted there are potential ramifications of including local works constructed prior to 17 November 1986. Such local works could have been constructed without the need to comply with Federal laws and regulations (such as the Endangered Species Act and the National Environmental Policy Act) that are applicable to the works of the Corps of Enginers. In granting credit for such works, the NPRM would allow circumventing of these laws and regulations because it does not provide that noncompliance will result in denial of credit. A similar situation could occur for local work carried out after 17 November 1986.

*Response:* If local work carried out prior to 17 November 1986 is compatible external work, the sponsor obviously did whatever he had to do to construct it. We believe the Congress intended, without reservation, that local interests get credit for their costs for completed local flood control works. There is no acceptable basis for us to retroactively impose new rules on the sponsor's past efforts. The work is done and, whether we grant credit or not, nothing changes that. We do not believe credit can, or should, be denied on the basis of DOI's argument. If local work carried out prior to 17 November 1986 is compatible integral work (part of the Federal project as authorized), then no new requirements arise. The project, as authorized, included all measures needed and they will be provided as part of project implementation—if not by local interests as part of their work then by the Crops. In either case, the Federal permit process to which local interests are subject in connection with work affecting the waters of the United States, triggers all Federal environmental laws. Local work carried out after 17 November 1986 will be credited only if approved in advance and ultimately incorporated as part of the recommended Federal project. Once again, the recommended Federal project plan will include all needed measures, considering the total plan including the incorporated creditable local work.

*Comment #41:* DOI also indicated concern that the NPRM could provide an opportunity for flood control interests to circumvent the provisions of the Fish and Wildlife Coordination Act (Act). The Act is not cited in 240.9(c)(2) and does not apply to non-Federal work unless a Corps permit is required. It is therefore conceivable that a local sponsor could have local work approved for credit without the action being reviewed by the Fish and Wildlife Service under the Act. While § 240.9(b)(3) and (c)(2) appear to address this concern partially, compliance with the Act should be clearly and positively addressed.

*Response:* When proposed local work is approved for possible credit in connection with an as-yet unauthorized Federal project, this does not confer on the local work the status of being part of a Federal project. The sponsor must proceed with accomplishment of the work as if it is his and his alone. Whatever he would have to do if the work were entirely unrelated to any Federal project he will have to do here. If a Federal project is never authorized, the fact that the sponsor received tentative approval for credit will mean nothing. The completed work will have to stand on its own. If, in the end, the local work is recommended for inclusion in a Federal project (and credit authorized), the project plan, including the incorporated local element, will have been subject to all the requirements any recommended project is subject to. This Federally recommended action is what is subject to the review requirements of the Fish and Wildlife Coordination Act. If, as a consequence of these requirements, special provisions must be include in the recommended plan, this is when they will be included. Existing Corps guidance adequately provides for the required coordination.

*Comment #42:* Finally, DOI recommended that a provision be added in 240.6 as follows: "The Corps will ensure that provisions of the Fish and Wildlife Coordination Act, Endangered Species Act, National Environmental Policy Act and other appropriate Federal, State and local requirements are met by coordinating with the appropriate agencies. Local work will not be eligible for credit if there is noncompliance with these requirements."

*Response:* For the reasons given in the responses to Comments #40 and #41, such a provision is considered unnecessary and inappropriate.

**Classification**

This regulation is not a major rule within the meaning of E.O. 12291 requiring preparation of a regulatory impact analysis. It will not result in an annual effect on the economy of $100 million or more and it will not result in a major increase in costs or prices.

Pursuant to 5 U.S.C. 605(b) I hereby certify that this regulation will not have a significant economic impact on a substantial number or entities.

**List of Subjects in 33 CFR Part 240**

Credit, Flood control, Intergovernmental relations, Public works, Water resources.

Approved:

**C. Hilton Dunn, Jr.,**

*Colonel, Corps of Engineers, Executive Director of Civil Works.*

Part 240 is added to 33 CFR to read as follows:

## PART 240—GENERAL CREDIT FOR FLOOD CONTROL

Sec.



**Authority:** Section 104, Water Resources Development Act of 1986 (Pub. L. 99-662); 33 U.S.C. 2214.

### § 240.1 Purpose.

This establishes guidelines and procedures for Department of the Army application of the provisions of section 104 of Pub. L. 99-662.

**§ 240.2 Applicability.**

Policies and procedures contained herein apply to all HQUSACE elements and field operating agencies of the Corps of Engineers having Civil Works responsibilities.

**§ 240.3 Reference.**

Section 104 of Pub. L. 99–662.

**§ 240.4 Legislative provisions.**

Section 104 authorizes and directs the development of guidelines which include criteria for determining whether work carried out by local interests is compatible with a project for flood control. Compatible work which was carried out prior to project authorization, before 17 November 1986 but after 17 November 1981, may be considered part of the project and credited against the non-Federal share of the cost of project, if the local sponsor applied for consideration of such work not later than 31 March 1987. Local work to be carried out after 17 November 1986 must receive Army approval prior to construction to be eligible for credit, taking into account the economic and environmental feasibility of the project. (Such approval can only be given on the basis of the guidelines required to be issued pursuant to section 104(a); hence, the law is silent with respect to work performed between 17 November 1986 and the effective date of the guidelines.) The credit will not relieve the non-Federal sponsor of the requirement to pay 5 percent of the project costs in cash during construction of the remainder of the project. This legislative authority also provides that benefits and costs of compatible work will be considered in the economic evaluation of the Federal project. This includes the costs and benefits of compatible local work which was carried out after 17 November 1981 or within the 5 years prior to the initial obligation of reconnaissance study funds if that should establish a later date.

**§ 240.5 Discussion.**

Discussion of this legislation is contained in the Conference Report, H.R. Rpt. No. 99–1013, which accompanies H.R. 6. The House passed version of the bill contained a number of project-specific provisions that authorized credit against the non-Federal share for compatible work completed by local interests. The Senate passed version authorized crediting of compatible flood control works for projects under study. Both general provisions would enable local interests to proceed with compatible work on the understanding that the local improvements would be considered a part of the Federal project for the purpose of benefit-to-cost analysis, as well as subsequent cost sharing. The Conference Committee deleted virtually all of the crediting provisions applicable to individual projects and expanded the general provision allowing the Secretary to credit the cost of certain work undertaken by local interests prior to project authorization against the non-Federal share of project costs and to consider the benefits and costs in the economic evaluation of a more comprehensive project. This authority provides a basis for non-Federal interests to undertake local work to alleviate flood damages in the period preceding authorization of a Federal project with assurance that they will not adversely affect the project's economic feasibility. It provides local sponsors more flexibility in meeting their flood problems.

**§ 240.6 General policy.**

(a) Section 104 is applicable only to projects specificially authorized by the Congress (not to projects authorized by the Chief of Engineers under continuing authorities), and only to "flood control" projects except in instances where the Congress may provide, by specific language in the authorization, that a project of other characterization is eligible for section 104 credit consideration.

(1) Section 104 provisions will be applied only at locations where Federal construction of a congressionally authorized project, or separable element thereof, is initiated after April 30, 1986; a congressionally authorized study is underway; or where the feasibility report has been forwarded for Executive Branch review or for consideration by Congress.

(2) The crediting provisions of section 104 are applicable only to non-Federal work started after the reconnaissance phase of Corps preauthorization studies but prior to project authorization. No credit is available under section 104 for non-Federal work started after project authorization.

(3) A credit recommendation will be in response to a specific request from a State, city, municipality or public agency that is the prospective local sponsoring agency for the contemplated Federal plan.

(b) Work eligible for crediting shall be limited to that part of the local improvement directly related to a flood control purpose. (These guidelines, although they generally make reference to flood control "projects," should be understood to have equivalent application to allocated flood control costs in a multiple purpose project.) Measures (structural or nonstructural) undertaken for channel alignment, navigation, recreation, fish and wildlife, land reclamation, drainage, or to protect against land erosion, and which, in conjunction with the project, do not produce appreciable and dependable effects in preventing damage by irregular and unusual rises in water levels, are not classed as flood control works and are ineligible for credit.

(c) Future work proposed for crediting should be separately useful for flood control or other purposes even if the Federal Government does not construct the contemplated project, and must not create a potential hazard.

(d) For local work initiated before 17 November 1986, but after 17 November 1981, the local sponsoring agency must have requested consideration by letter dated on or before 31 March 1987. For new local work commenced after 17 November 1986, only work for which the sponsor receives notification of compatibility and extent of potential credit pursuant to § 240.9(c) of this regulation shall be eligible for credit.

(e) The maximum amount creditable shall equal the actual expenditures made by non-Federal entities (not limited solely to the project sponsor's specific efforts and expenditures) for work that meets the criteria set forth above and in § 240.7 or 240.8. Expenditures eligible for inclusion in the amount creditable include the costs of all efforts actually required for the non-Federal implementation of the compatible flood control works including, but not necessarily limited to, costs for permits, environmental, cultural or archeological investigations, engineering and design, land acquisition expense, other LERRD, and construction of the flood control works including any required mitigation measure. For construction efforts accomplished by non-Federal interests using their own forces and other resources, for which "costs" may not be recorded, consideration will be given to inclusion of a reasonable estimate of the value thereof (as if accomplished by contract). Regardless of the total amount creditable on this basis, however, the amount actually credited will not exceed the amount that is a reasonable estimate of the reduction in Federal project expenditures resulting from substitution of the local work for authorized project elements or, in the case of compatible work outside the scope of the project as originally authorized, a reasonable estimate of what Federal expenditures would have been if that work had been Federally constructed. Costs of subsequent

maintenance of the creditable non-Federal flood control work will not be credited. In the event that the local construction work is financed by a Federal non-reimbursable grant or other Federal funds, the amount creditable against future local cooperation requirements shall be reduced by a commensurate amount, unless the law governing the grant permits grant funds to be used to meet the non-Federal share of Corps of Engineers cost sharing requirements. However, there will be no corresponding reduction in the costs or benefits considered in the project's economic evaluation.

(f) Regardless of the total amount creditable for compatible work at the time of construction, the local sponsor will be required to contribute 5 percent of the total project cost in cash during construction of the project by the Corps. The credit can only be applied toward the value of needed lands, easements, rights-of-way, relocations, and disposal areas (LERRD) the sponsor would otherwise have to provide plus any additional required cash contribution needed to make the total sponsor contribution equal at least 25 percent of total project costs. As a consequence of crediting non-Federal construction costs against LERRD requirements some costs for LERRD may become a Federal responsibility.

(g) Reimbursement to non-Federal interests will not be made for any excess of costs for compatible works beyond that which can be credited in accordance with § 240.6(f). In this regard, reimbursements pursuant to section 103(a)(3) of Pub. L. 99–662 will not be made should the non-Federal share of project-related costs exceed 50 percent of total project-related costs by virtue of such excess of costs for compatible work.

(h) Local interests are responsible for developing all necessary engineering plans and specifications for the work they propose to undertake. However, those costs, including engineering and overhead, directly attributable to the creditable part of local work may be included in the amount credited.

(i) Non-Federal costs in connection with LERRD required for the Federal project, regardless of when incurred, will be recognized in computation of the LERRD component of project costs (the credit provisions of section 104, Pub. L. 99–662, have no direct bearing on this).

(j) Non-Federal construction and LERRD costs in connection with compatible work for which credit can be given will, when those costs are incorporated in project costs, be included in their related categories, and total project cost sharing responsibilities will be adjusted accordingly.

### § 240.7 Credit criteria for projects authorized on or before 17 November 1986.

(a) For work accomplished prior to project authorization, the following local improvements can be construed as compatible and considered for credit:

(1) Work that would constitute an integral part of the Federal project as authorized (integral work);

(2) Work that would have been included in the Federal project if it had not been assumed to be part of the without project condition (external work); and

(3) Work that reduces the construction cost of the Federal plan (substitute work).

(b) For local work accomplished subsequent to project authorization, only work started prior to authorization, and for which credit consideration was requested by letter dated on or before 31 March 1987, is eligible for credit under the provisions of section 104. New non-Federal work initiated after project authorization, provided it is on an element of the authorized project, is subject to limited credit under a separate authority. Such work, if the sponsor desires related credit, should be undertaken under formal agreement pursuant to section 215 of the Flood Control Act of 1968 Pub. L. 90–483, approved August 13, 1968, as amended.

(c) All creditable non-Federal costs for compatible work, and related benefits, may be considered in the project economic evaluation and, to the extent the related benefits are required for economic justification, creditable costs shall be included in total project first costs. In any event, costs for compatible work shall be included in total project first costs to at least the extent that credit is actually given, including LERRD.

(d) Flood control projects authorized in Pub. L. 99–662 subject to sections 903 (a) and (b) or similar provisions 401(b) and 601(b)) of that act fall, with respect to crediting non-Federal costs, under this paragraph. (However, pending completion of the relevant procedural requirements for such projects, as set forth in those provisions of the act, section 215 agreements covering proposed non-Federal accomplishment of compatible work on the project will not be executed.) Works eligible for credit will be explicitly addressed in new project reports submitted to the Secretary of the Army pursuant to sections 903 (a) and (b) or similar provisions.

(e) Formulas for determining the amount of allowable credit in accordance with these guidelines are provided in Appendix B.

### § 240.8 Credit criteria for projects authorized after 17 November 1986.

(a) In general, for projects authorized after 17 November 1986, work eligible for credit will be explicitly addressed in recommendations to Congress. If a report has been submitted to Congress, work on an element of the recommended Federal project or work that reduces its construction cost can be considered for credit.

(b) Local work initiated after 17 November 1981 or within 5 years before the first obligation of funds for the reconnaissance study began, whichever is later, can be incorporated into the recommended plan for the purpose of economic evaluation. However, credit can be considered only for local work undertaken after the end of the reconnaissance study and for which a credit application has been acted upon prior to construction pursuant to § 240.9 procedures. (For any portion of such work undertaken prior to 17 November 1986, credit may be granted only if a letter application was received prior to 31 March 1987.) If such work was undertaken between 17 November 1986 and the effective date of this regulation, an after-the-fact application pursuant to the § 240.9 procedures will be accepted.

(c) Reports recommending Federal participation in a plan should include the following, "Future non-Federal expenditures for improvements that, prior to their construction, are found to be compatible with the plan recommended herein, as it may be subsequently modified, will entitle the *(sponsor's name)* to consideration for credit in accordance with the guidelines established under section 104, Pub. L. 99–662."

(d) All costs for non-Federal work incorporated in the recommended plan in accordance with this paragraph shall be included in total project first costs and will therefore be subject to cost sharing. Related benefits will be included in the project's economic evaluation.

### § 240.9 Procedures.

(a) For non-Federal works undertaken prior to 17 November 1986, credit determinations (deferred until these guidelines became effective) will be made by the Secretary in response to the applications received prior to 31 March 1987. Future non-Federal works for which credit may be allowed under the provisions of section 104 of Pub. L. 99–662 are limited, basically, to local works undertaken while Federal

preauthorizations studies of a Federal project for the locality are in progress. Credit consideration for such works will be governed by the procedures set forth here. Non-Federal entities desiring credit should confer with the District Engineer and submit a written application to him. The application will include a full description of planned work, plans, sketches, and similar engineering data and information sufficient to permit analysis of the local proposal.

(b) The District Engineer shall review the engineering adequacy of the local proposal and its relation to the Federal Plan and determine what part of the proposed local improvement would be eligible for credit. The District Engineer will forward his recommendations through the Division Engineer and the Chief of Engineers to the Assistant Secretary of the Army (Civil Works) and provide information on:

(1) Basis for concluding the local plan is appropriate in relation to the prospective Federal plan.

(2) Total estimated cost and benefits of creditable work.

(3) Environmental effects of the local work, including a brief statement of both beneficial and detrimental effects to significant resources.

(4) The urgency for proceeding with the local plan.

(c) Upon being informed of the Secretary's decision, the District Engineer shall reply by letter stating to the local applicant what local work and costs can reasonably be expected to be recommended for credit under the provisions of section 104 (assuming that the final plan for a Federal project, when it is ultimately recommended, remains such as to preserve the local work as a relevant element). If the improvement proposed by the non-Federal entity includes work that will not become a part of the Federal project, the means of determining the part eligible for credit shall be fully defined. This letter shall include the following conditions:

(1) This shall not be interpreted as a Federal assurance regarding later approval of any project nor shall it commit the United States to any type of reimbursement if a Federal project is not undertaken.

(2) This does not eliminate the need for compliance with other Federal, State, and local requirements, including any requirements for permits, Environmental Impact Statements, etc.

(3) Upon authorization of the Federal project, approval shall be subject to rescission if the non-Federal work has not commenced and, as a consequence, Corps planning for orderly implementation of the project is being adversely affected.

(d) The non-Federal entity will notify the District engineer when work commences. The District Engineer will conduct periodic and final inspections. Upon completion of local work, local interests shall provide the District Engineer details of the work accomplished and the actual costs directly associated therewith. The District Engineer shall audit claimed costs to ascertain and confirm those costs properly creditable and shall inform the non-Federal entity of the audit results.

(e) During further Corps studies, the local work actually accomplished that would constitute a legitimate part of the overall recommended Federal project may be incorporated within any plan later recommended for implementation.

(f) The District Engineer shall submit a copy of his letter and notification of creditable costs of completed work to the Secretary through the Division Engineer and the Chief of Engineers.

(g) All justification sheets supporting new start recommendations for Preconstruction Engineering and Design or Construction of projects will include information on credits in the paragraph on local cooperation. The information should include but not be limited to date of the District Engineer's letter to the sponsor pursuant to § 240.9(c) of this regulation, status of the creditable work, estimated or actual cost of the work and the estimated amount of credit.

**Appendix A—[Reserved]**

**Appendix B—Formulas for Determining Amount of Allowable Credit**

1. *General.* The amount of credit that non-Federal interests may receive under the provisions of section 104 of the Water Resources Development Act of 1986 depends first on the value of the compatible work they have accomplished and then on the value of the local cooperation against which they may receive credit. If the compatible work is for construction which was outside the scope of the project as authorized, the costs for the compatible work for which credit is desired are additive to the original estimate of total project cost. This increases the estimated cost of basic local cooperation requirements, thus enlarging the target against which credit may be given.

2. The "formulas" for determining the amount of credit that may be allowed in the various cases are provided in the following paragraphs. TPC means the total estimate of project costs for the project as it was authorized. LERRD means the costs for lands, easements, rights-of-way, relocations and disposal areas as included in that estimate.

3. Calculations for several hypothetical examples are provided to illustrate how crediting determinations would impact on project costs and on cost sharing. For each of these examples it is assumed that the estimated total project cost (TPC) of the project as authorized is $100.0 million. All of the elements of cost are given in millions of dollars.

4. *Integral Work.* For compatible work that is integral with the project as authorized (240.7(a)(1)) or compatible work that constitutes an advantageous substitution for work integral with the authorized project (i.e. substitute work, 240.7(a)(3)):

a. LERRD<20% TPC
Credit = Value of compatible work up to 20% TPC

b. LERRD>20% TPC
Credit = Value of compatible work up to LERRD

Crediting non-Federal interests for constructing an integral part of the project or substitute work will not result in any increase in project costs. Ordinarily, the result will simply be a transfer of equivalent responsibilities between the Corps and non-Federal interests. If non-Federal interests should accomplish compatible integral or substitute work exceeding the possible credit, the Corps will be relieved of the expense of constructing an increment of the project. An example is provided below. In this example, non-Federal interests have accomplished integral project work amounting to 30.0 million. LERRD are less than 20% of TPC so that the maximum value of local cooperation against which they may receive credit is $20.0 million. Since the $10.0 for which credit cannot be given nonetheless represents useful project work, in this example the Corps would be relieved of the costs for accomplishing that much construction.

| Case: LERRD < 20% TPC | Basic project | Credit Example 1: Compatible work, 30.0 |
|---|---|---|
| Non-Federal: | | |
| 5% Cash | 5.0 | 5.0 |
| LERRD | 14.0 | 0.0 |
| Extra cash (toward constr.) | 6.0 | 0.0 |
| Construction (actual) | | 30.0 |
| Subtotal | 25.0 | 35.0 |
| Federal: | | |
| Construction | 75.0 | 51.0 |
| LERRD | | 14.0 |
| Subtotal | 75.0 | 65.0 |
| TPC | 100.0 | 100.0 |
| Reduction in Federal costs | | [1] 10.0 |

[1] The amount by which the integral or substitute work actually accomplished by non-Federal interests exceeds the requirements of local cooperation against which credit may be given.

5. *External Work.* For compatible work outside the scope of the project as authorized (i.e. external work, 240.7(a)(2)):

a. LERRD<25% TPC
Credit=Value of compatible work up to 25% TPC

b. LERRD>25% TPC
Credit = Value of compatible work up to LERRD

Crediting non-Federal interests for compatible work which was not part of the

project as authorized (external work) will result in an increase in project costs and an increase in the net Federal costs. The costs for compatible external work for which non-Federal interests desire credit must be incorporated into the estimate of total project costs (but only to the extent that credit can actually be given). Assigned Federal and non-Federal project costs then making up the adjusted total project costs will both be greater than for the basic project. However, the net effect will be a savings to non-Federal interests in the further costs they will have for fulfilling local cooperation requirements. The maximum amount that can be credited for compatible external work (and thus added to project costs), where LERRD<25% TPC, follows from Credit, C = 20% (TPC + C) which reduces to C = 0.2TPC + 0.2C, then to 0.8C = 0.2TPC, and finally C = (0.2/0.8)TPC or 0.25TPC as indicated in a, above. An example of crediting in a case involving external work is provided below. In this example, as in example 1, non-Federal interests have accomplished work amounting to $30.0 million. This work, however, was not intergral with the project as authorized (it has been determined to be compatible external work), so that any part of it for which credit is given must be added to TPC. Since, in this case LERRD are less than 25% of TPC, the maximum amount that can be credited is 25% of TPC, or $25.0 million. Adjusting TPC by this amount results in an added Federal cost of $18.75 million (75% of the $25.0 million increase).

| Case: LERRD <25% TPC | Basic project | Credit Example 2, Compatible work, 30.0 |
|---|---|---|
| Non-Federal: | | |
| 5% Cash | 5.0 | 6.25 |
| LERRD | 14.0 | 0.0 |
| Extra cash (toward constr.) | 6.0 | 0.0 |
| Construction (actual) | | 25.0 |
| Subtotal | 25.0 | 31.25 |
| Federal: | | |
| Construction | 75.0 | 79.75 |
| LERRD | | 14.0 |
| Subtotal | 75.0 | 93.75 |
| TPC | 100.0 | |
| Adjusted TPC | | 125.0 |
| Excess of Compatible Work | | [1] 5.0 |
| Increase in Federal Costs | | [2] 18.75 |

[1] This portion of the compatible external work is not incorporated in the project costs because it would be a disadvantage to the project sponsor to do so (if included, the sponsor would become obligated for an additional 5% up-front cash contribution but without any savings in other local cooperation because there would be nothing left to give credit against).

[2] This is also the measure of the net savings to non-Federal interests by virtue of crediting.

6. *Combined integral and external works.* For cases where non-Federal interests have accomplished compatible work, some of which is integral with the project as authorized and some of which is outside the original scope (external), determination of the allowable credit is a two step process. Work that is integral to the project is credited first. This, C1, is accomplished in accordance with paragraph 4 above. If, after this step, there remain local cooperation requirements against which credit may be given, credit for compatible external work, C2, is determinable on the following basis.

a. LERRD≤20% (TPC+C2)
C2=Value of compatible work up to 25% TPC–1.25C1

b. LERRD >20% (TPC+C2)
C2=Value of compatible work up to remaining LERRD

Note that total credit, C=C1+C2. Formula 6.a. is derived from C=C1+C2=20% (TPC+C2). An example of crediting in a case involving both kinds of compatible works is provided below. In this example non-Federal interests have accomplished $25.0 million in compatible work, $5.0 of which was integral with the project as authorized and $20.0 of which was external. The integral work is credited in the first step against the extra cash component of the original local cooperation requirements. TPC is unaffected; however, the target against which credit for the external work might be credited has been partially used up. The second step shows only the incremental effects of crediting external work. Using 6.a. the maximum credit that can be given for this work is $18.75 million. Although other non-Federal requirements are extinguished as a result of the credit for the external work, the non-Federal 5% cash contribution increases by $0.9375 million, say $0.94 (5% of $18.75). In the final step, the incremental effects of crediting the external work are added in with the values obtained in step 1.

| Case: LERRD ≤20% (TPC+C2) | Basic project | Credit Example 3: Compatible work, [1] 25.0 | | |
|---|---|---|---|---|
| | | Step 1 | Step 2 | Final |
| Non-Federal: | | | | |
| 5% Cash | 5.0 | 5.0 | 0.94 | 5.94 |
| LERRD | 14.0 | 14.0 | 0.0 | 0.0 |
| Extra cash (toward constr.) | 6.0 | 1.0 | 0.0 | 0.0 |
| Construction (actual) | | 5.0 | 18.75 | 23.75 |
| Subtotal | 25.0 | 25.0 | | 29.69 |
| Federal: | | | | |
| Construction | 75.0 | 75.0 | 0.06 | 75.06 |
| LERRD | | | 14.0 | 14.0 |
| Subtotal | 75.0 | 75.0 | | 89.06 |
| TPC | 100.0 | 100.0 | | |
| Adjusted TPC | | | | 118.75 |
| Excess of Compatible Worth | | | 1.25 | 1.25 |
| Increase in Federal Costs | | | | 14.06 |

[1] Compatible work consisting of 5.0 integral work credited in first step of calculations plus 20.0 external work credited, to the extent possible, in second step.

[FR Doc. 87-26495 Filed 11-17-87; 8:45 am]
BILLING CODE 3710-08-M

## VETERANS ADMINISTRATION

## 38 CFR Part 4

## Evaluation of Hearing Loss

**AGENCY:** Veterans Administration.

**ACTION:** Final rule.

**SUMMARY:** The Veterans Administration (VA) has amended the Schedule for Rating Disabilities (38 CFR Part 4) to implement a new method for evaluating the degree of disability attributable to hearing loss. These amendments are necessary because of new testing methods which place greater emphasis on decibel loss and speech discrimination in higher frequency ranges. The effect of these amendments will be to provide more accurate measurement of hearing impairment and appropriate compensation to hearing disabled veterans.

**EFFECTIVE DATE:** December 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert M. White, Chief, Regulations

Staff (211B), Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

**SUPPLEMENTARY INFORMATION:** On pages 17607-11 of the **Federal Register** of May 11, 1987, the VA published proposed rules on the evaluation of hearing loss. A correction to that proposal was also published on page 19365 of the **Federal Register** of May 22, 1987. Interested persons were given until July 9, 1987, to submit written comments, suggestions or objections to the proposed rules.

A total of 11 comments were received. Comments were submitted by the American Speech-Language-Hearing Association (ASHA), the Veterans of Foreign Wars of the United States, the American Legion and eight private individuals. While most commenters were generally in favor of this new method for evaluating hearing loss, ASHA and the American Legion completely supported the proposed amendments without suggesting any changes.

Two commenters appeared to be arguing their personal claims for benefits due to hearing loss and did not address or recommend substantive changes in the proposed rules.

Another commenter suggested that Table VI be amended to provide a numeric designation of XI when the average puretone decibel loss was 98 or more and the percent of discrimination was 0 to 38. This suggestion was not accepted because it was not supported by scientific or medical evidence and would have destroyed the logical progression of the proposed table. Table VI was developed during months of consultations with our Department of Medicine and Surgery and represents the best judgment of experts in this field. To modify even one small area of Table VI without the support of scientific or medical evidence would not be justified.

One commenter requested an explanation of puretone averaging and asked that the Maryland CNC word lists be published with the rule. Puretone averaging for purposes of this new rating schedule will be accomplished by adding the decibel losses at frequencies of 1000, 2000, 3000 and 4000 Hz and dividing the answer by 4. The Maryland CNC word lists are diagnostic tools and are not appropriate for publication with the method of assessing average loss of earning capacity. In addition, advance knowledge of the words contained in each list might unnaturally aid in word recognition thereby skewing the results of the test.

Another commenter suggested testing the level of hearing loss in 500 Hz increments rather than in 1000 Hz increments so that a more complete graph of the hearing loss would be available. While this is certainly true, one could argue that an even more complete graph of the hearing loss would be obtained by testing at 250 Hz increments, or 100 Hz increments, or 10 Hz, etc. The proposed method of evaluating hearing loss is based on the recommended changes in testing methods and cannot be changed at this time. If professionals in the field of audiology change their testing methods in the future, clearly we would again have to amend our evaluation methods.

One commenter also suggested that an additional 10 percent should be added to the evaluation of a hearing impaired veteran when use of a hearing aid is medically indicated and that special monthly compensation under 38 U.S.C. 314(k), currently payable for veterans with an 80 percent hearing loss evaluation, be payable under the new rating schedule for evaluations of 80, 90 and 100 percent. For reasons stated below we cannot accept either suggestion.

Hearing aids are not medically indicated unless they would serve some useful purpose, namely improving a veteran's hearing impairment. To pay additional compensation for a hearing impairment that is improved through the use of an assistive device that is provided free of charge would be inconsistent with the purpose of compensation.

Special monthly compensation under 38 U.S.C. 314(k) is payable for "deafness of both ears, having absence of air and bone conduction." When the maximum evaluation for hearing loss was 80 percent, it was proper to pay special monthly compensation at that level because veterans who had absence of air and bone conduction were rated at that level. The new rating schedule, however, includes 90 and 100 percent evaluations, and it is clear that veterans in the new 80 and 90 percent categories have remaining air and/or bone conduction which is identifiable and distinguishable from veterans in the 100 percent category. Consequently, the new 80 and 90 percent evaluation do not qualify under the terms of 38 U.S.C. 314(k) for special monthly compensation.

One commenter also argued against having a schedular 100 percent evaluation for hearing loss indicating that the 100 percent evaluation should be reserved only for those hearing impaired veterans who could demonstrate that they were individually unemployable. We cannot agree. Approximately 1,200 veterans are currently receiving compensation at the 100 percent rate because they have established that their hearing impairment is the primary reason for their inability to work. This shows that severe hearing impairment can, in some cases, be totally disabling in the workplace. In addition, the criteria being established for the 100 percent schedular evaluation are such that only the most profoundly deaf will qualify. Those veterans who might qualify for the schedular 100 percent rating should not be disadvantaged simply because they have succeeded in obtaining employment and overcoming their disability.

Finally, one commenter noted that the structure of the proposed rules would place new diagnostic codes 6100 through 6110 out of sequence in the rating schedule in that they would follow diagnostic code 6260. A simple suggestion was made to correct this oversight, and we agree with that suggestion. Under the proposed rules, section 4.87a containing hearing loss diagnostic codes 6277 through 6297 was to be simply deleted. However, by redesignating section 4.84b (which contains diagnostic codes 6200 through 6260) as section 4.87a and moving it to the space in the schedule currently occupied by diagnostic codes 6277 through 6297 (which are being deleted), all diagnostic codes would then be in numerical sequence. This suggestion is being adopted. Appropriate amendments will also be made to Appendix A reflecting this change.

The proposed rules, as amended herein, are adopted. We appreciate the interest expressed by each commenter.

The Administrator hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only Claimants for VA benefits would be directly affected. Therefore, pursuant to 5 U.S.C. 605 (b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**List of Subjects in 38 CFR Part 4**

Handicapped, Pensions, Veterans.

(Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109)

Approved: October 22, 1987.

**Thomas K Turnage,**

*Administrator.*

38 CFR, Part 4, Schedule for Rating Disabilities, is amended as follows:

## PART 4—[AMENDED]

**§ 4.87a [Removed]**

**§ 4.84b [Redesignated as §4.87a]**

1. Section 4.87a is removed and § 4.84b is redesignated as § 4.87a.

2. Section 4.85 is revised to read as follows:

**§ 4.85 Evaluation of hearing impairment.**

(a) Examinations are conducted using the controlled speech discrimination tests together with the results of the puretone audiometry test. The horizontal lines in table VI represent nine categories of percent of discrimination based on the controlled speech discrimination test. The vertical columns in table VI represent nine categories of decibel loss based on the puretone audiometry test. The numeric designation of impaired efficiency (I through XI) will be determined for each ear by intersecting the horizontal row appropriate for the percentage of discrimination and the vertical column appropriate to puretone decibel loss; thus with percent of discrimination of 70 and average puretone decibel loss of 64, the numeric designation is V for one ear. The same procedure will be followed for the other ear.

(b) The percentage evaluation will be found from table VII by intersecting the horizontal row appropriate for the numeric designation for the ear having the better hearing and the vertical column appropriate to the numeric designation for the ear having the poorer hearing. For example, if the better ear has a numeric designation of "V" and the poorer ear has a numeric designation of "VII," the percentage evaluation is 30 percent and the diagnostic code is 6103.

(c) Table VIa provides numeric designations based solely on puretone averages and is for application *only* when the Chief of the Audiology Clinic certifies that language difficulties or inconsistent speech audiometry scores make the use of both puretone average and speech discrimination inappropriate.

(Authority: 38 U.S.C. 355)

3. Section 4.86a is revised to read as follows:

**§ 4.86a Evidence other than puretone audiometry and controlled speech.**

When claims are encountered in which the medical evidence necessary to establish service-connection for hearing loss predates the use of puretone audiometry and controlled speech, service-connection will be determined under the provisions of §§ 4.85 through 4.87a of this part as in effect on (the day preceding the effective date of this change.)

(Authority: 38 U.S.C. 355)

4. Part 4. is amended by revising table VI and table VII and by adding table VIa to read as follows:

* * * * *

BILLING CODE 8320-01-M

TABLE VI

Numeric Designation of Hearing Impairment

| PERCENT OF DISCRIMINATION | Average Puretone Decibel Loss | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 0-41 | 42-49 | 50-57 | 58-65 | 66-73 | 74-81 | 82-89 | 90-97 | 98+ |
| 92-100 | I | I | I | II | II | II | III | III | IV |
| 84-90 | II | II | II | III | III | III | IV | IV | IV |
| 76-82 | III | III | IV | IV | IV | V | V | V | V |
| 68-74 | IV | IV | V | V | VI | VI | VII | VII | VII |
| 60-66 | V | V | VI | VI | VII | VII | VIII | VIII | VIII |
| 52-58 | VI | VI | VII | VII | VIII | VIII | VIII | VIII | IX |
| 44-50 | VII | VII | VIII | VIII | VIII | IX | IX | IX | X |
| 36-42 | VIII | VIII | VIII | IX | IX | IX | X | X | X |
| 0-34 | IX | X | XI | XI | XI | XI | XI | XI | XI |

TABLE VIa*

Average Puretone Decibel Loss

| 0-41 | 42-48 | 49-55 | 56-62 | 63-69 | 70-76 | 77-83 | 84-90 | 91-97 | 98-104 | 105+ |
|---|---|---|---|---|---|---|---|---|---|---|
| I | II | III | IV | V | VI | VII | VIII | IX | X | XI |

Numeric Designation

* This table is for use only as specified in 4.85(c).

TABLE VII

Percentage Evaluations for Hearing Impairment
(with diagnostic codes)

| BETTER EAR \ POORER EAR | XI | X | IX | VIII | VII | VI | V | IV | III | II | I |
|---|---|---|---|---|---|---|---|---|---|---|---|
| XI | 100* (6110) | | | | | | | | | | |
| X | 90 (6109) | 80 (6108) | | | | | | | | | |
| IX | 80 (6108) | 70 (6107) | 60 (6106) | | | | | | | | |
| VIII | 70 (6107) | 60 (6106) | 50 (6105) | 50 (6105) | | | | | | | |
| VII | 60 (6106) | 60 (6106) | 50 (6105) | 40 (6104) | 40 (6104) | | | | | | |
| VI | 50 (6105) | 50 (6105) | 40 (6104) | 40 (6104) | 30 (6103) | 30 (6103) | | | | | |
| V | 40 (6104) | 40 (6104) | 40 (6104) | 30 (6103) | 30 (6103) | 20 (6102) | 20 (6102) | | | | |
| IV | 30 (6103) | 30 (6103) | 30 (6103) | 20 (6102) | 20 (6102) | 20 (6102) | 10 (6101) | 10 (6101) | | | |
| III | 20 (6102) | 20 (6102) | 20 (6102) | 20 (6102) | 20 (6102) | 10 (6101) | 10 (6101) | 10 (6101) | 0 (6100) | | |
| II | 10 (6101) | 10 (6101) | 10 (6101) | 10 (6101) | 10 (6101) | 10 (6101) | 10 (6101) | 0 (6100) | 0 (6100) | 0 (6100) | |
| I | 10 (6101) | 10 (6101) | 0 (6100) | 0 (6100) | 0 (6100) | 0 (6100) | 0 (6100) | 0 (6100) | 0 (6100) | 0 (6100) | 0 (6100) |

* Entitled to special monthly compensation under 38 CFR 3.350(a) (38 U.S.C. 314(k)).

BILLING CODE 8320-01-C

## Appendix A—[Amended]

5. In Appendix A—Table of Amendments and Effective Dates Since 1946 the entries for § 4.84b, 4.85, 4.86, 4.86a, 4.87, and 4.87a are revised to read as follows:

APPENDIX A—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946

| Sec. | |
|---|---|
| * | * * * * * |
| 4.84b | Removed-December 18, 1987 (text redesignated § 4.87a, December 18, 1987) |
| 4.85 | March 23, 1956. December 18, 1987. |
| 4.86 | March 23, 1956. December 18, 1987. |
| 4.86a | March 23, 1956. December 18, 1987. |
| 4.87 | Tables VI and VII replaced by new Tables VI VIa and VII December 18, 1987. |
| 4.87a | Diagnostic Codes 6277 through 6297, March 23, 1956; removed December 18, 1987. (Test from § 4.84b redesignated § 4.87a, December 18, 1987. |
| * | * * * * * |

## Appendix B—[Amended]

6. In Part 4, Appendix B—Numerical Index of Disabilities, diagnostic codes 6100 through 6110 are revised to read as follows:

* * * * *

IMPAIRMENT OF AUDITORY ACUITY

| | |
|---|---|
| 6100 | 0% evaluation based on Table VII |
| 6101 | 10% evaluation based on Table VII |
| 6102 | 20% evaluation based on Table VII |
| 6103 | 30% evaluation based on Table VII |
| 6104 | 40% evaluation based on Table VII |
| 6105 | 50% evaluation based on Table VII |
| 6106 | 60% evaluation based on Table VII |
| 6107 | 70% evaluation based on Table VII |
| 6108 | 80% evaluation based on Table VII |
| 6109 | 90% evaluation based on Table VII |
| 6110 | 100% evaluation based on Table VII |

* * * * *

## Appendix C—[Amended]

7. In Part 4, Appendix C—Alphabetical Index of Disabilities, is revised by removing Deafness—Table II, diagnostic code numbers 6277 through 6297 and inserting new information to read as follows:

* * * * *

DEAFNESS

| | | |
|---|---|---|
| 0% | Evaluation based on Table VII | 6100 |
| 10% | Evaluation based on Table VII | 6101 |
| 20% | Evaluation based on Table VII | 6102 |
| 30% | Evaluation based on Table VII | 6103 |
| 40% | Evaluation based on Table VII | 6104 |
| 50% | Evaluation based on Table VII | 6105 |
| 60% | Evaluation based on Table VII | 6106 |
| 70% | Evaluation based on Table VII | 6107 |
| 80% | Evaluation based on Table VII | 6108 |
| 90% | Evaluation based on Table VII | 6109 |
| 100% | Evaluation based on Table VII | 6110 |

* * * * *

[FR Doc. 87-26497 Filed 11-17-87; 8:45am]
BILLING CODE 8320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

[FRL-3291-7]

## Designation of Areas for Air Quality Planning Purposes; State of Connecticut; Redesignation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a request by the State of Connecticut to redesignate the entire State of Connecticut from secondary nonattainment to attainment of the National Ambient Air Quality Standards (NAAQS) for total suspended particulate (TSP). Under section 107 of the Clean Air Act, the designation of attainment status may be changed where warranted by the available data.

**EFFECTIVE DATE:** This action will become effective January 19, 1988, unless notice is received by December 18, 1987, that adverse or critical comments will be submitted.

**ADDRESSES:** Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Building, Boston, MA 02203; and the Connecticut Department of Environmental Protection, 165 Capitol Avenue, Hartford, CT 06106.

**FOR FURTHER INFORMATION CONTACT:** Richard Burkhart, (617) 565-3223; FTS 835-3223.

**SUPPLEMENTARY INFORMATION:** On March 12, 1987, pursuant to section 107(d)(5) of the Clean Air Act, the State of Connecticut submitted a request to redesignate the entire State of Connecticut from secondary nonattainment for the NAAQS for TSP to attainment. The entire State of Connecticut has been designated as secondary nonattainment for TSP since 1982 (47 FR 44263).

The EPA revised the particular matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers or less (PM10). The EPA will, however, continue to process redesignations of areas from nonattainment to attainment for TSP in keeping with past policy because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (page 24682, column 1) describes EPA's transition policy regarding TSP redesignations.

In order for the EPA to approve a redesignation from secondary nonattainment to attainment for TSP, four criteria must be met. First, eight consecutive quarters of quality-assured and representative TSP monitoring data must be available which demonstrate attainment. Second, an EPA-approved control strategy must be in place. Third, emission reductions and improved air quality must not be temporary, for example the result of the economic slowdown. Fourth, the TSP reduction must not be the result of any dispersion technique. As discussed below these requirements have been met by Connecticut. First, EPA reviewed the air quality data for the entire State of Connecticut. The most recent 12 quarters of monitored TSP data (1984–1986) for the State show no violations of the primary or secondary standards. Second, Connecticut is enforcing an EPA-approved, primary TSP control strategy (45 FR 84769 and 47 FR 41958). Third, Connecticut demonstrated that the improvement in air quality is neither temporary nor the result of economic downturn. Fourth, Connecticut does not use any dispersion techniques to reduce ambient TSP concentrations. Further information is available in the technical support document, available at the address listed above.

### Final Action

EPA is approving the redesignation to attainment of the NAAQS for TSP in the entire State of Connecticut, submitted on March 12, 1987.

Since EPA views the redesignation as noncontroversial, we are taking this action without prior proposal. This action will be effective January 19, 1988. However, if EPA is notified within 30 days that adverse or critical comments will be submitted, we will withdraw this action and publish a new rulemaking proposing the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 19, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 81**

Air pollution control.

Date: November 10, 1987.

**Lee M. Thomas,**

*Administrator.*

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 81—[AMENDED]

1. The authority citation for Part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 81.307 is amended by revising the attainment status designation table for TSP to read as follows:

**§ 81.307 Connecticut.**

CONNECTICUT—TSP

| Designated area | Does not meet primary standards | Does not meet secondary standards | Cannot be classified | Better than national standards |
|---|---|---|---|---|
| AQCR 41 | | | | X |
| AQCR 42 | | | | X |
| AQCR 43 | | | | X |
| AQCR 44 | | | | X |

[FR Doc. 87–26558 Filed 11–17–87; 8:45 am]

BILLING CODE 6560–50–M

## 40 CFR Part 180

**[PP 4F3150/R923; FRL–3292–7]**

## Pesticide Tolerance for Iprodione

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes tolerances for residues of the fungicide iprodione in or on beans, bean forage, and bean hay. This regulation to establish the maximum permissible levels for residues of iprodione in or on these raw agricultural commodities was requested by Rhone-Poulenc, Inc.

**EFFECTIVE DATE:** Effective on November 18, 1987.

**ADDRESS:** Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1900.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of December 12, 1984 (49 FR 48375), which announced that Rhone-Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852, had submitted a pesticide petition (4F3150) to EPA proposing that 40 CFR Part 180 be amended by establishing tolerances for the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboximide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide] expressed in or on the commodities beans, succulent at 2.0 parts per million (ppm), beans, dry at 2.0 ppm, bean forage at 90 ppm, and beans, dried, vine hay at 90 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 500 ppm (25 milligrams per kilogram of body weight per day (mg/kg bwt/day)), a reproductive lowest-effect-level (LEL) of 2,000 ppm (100 mg/kg bwt/day), and a systemic NOEL equal to or greater than 2,000 ppm (100 mg/kg bwt/day;

2. A rabbit teratology study in which the following doses were administered by gavage: 0, 20, 60, and 200 milligrams/kilograms body weight (mg/kg bwt), resulting in a teratogenic NOEL equal to or greater than 60 mg/kg/ bwt;

3. A rat teratology study in which the following doses were administered by gavage: 0, 40, 90, and 200 mg/kg bwt, resulting in a teratogenic NOEL greater than 200 mg/kg bwt (considered supplementary under current guidelines and may be upgraded to minimum with additional information);

4. A 24-month feeding/oncogenicity study in rats using dosage levels of 125, 250, and 1,000 ppm (6.25, 12.5, and 50 mg/kg/ bwt/day), which showed no oncogenic effects under the conditions of the study;

5. An 18-month oncogenicity study in mice using dosage levels of 200, 500, and 1,250 ppm (28.6, 71.4, and 178.6 mg/kg bwt/day), which showed no oncogenic effects under the conditions of the study;

6. A 1-year dog feeding study using dosage levels of 100, 600, and 3,600 ppm (2.5, 15, and 90 mg/kg bwt/day) with a NOEL of 100 ppm (2.5 mg/kg bwt/day) and an LEL of 600 ppm (15 mg/kg bwt/day); and

7. A 90-day dog feeding study using dosage levels of 800, 2,400, and 7,200 ppm (20, 60, and 180 mg/kg bwt/day) with a NOEL of 2,400 ppm (60 mg/kg bwt/day) and an LEL of 7,200 ppm (180 mg/kg bwt/day).

Data currently lacking include an acute dermal study, a skin sensitization study, and a metabolism study in the rat.

The acceptable daily intake (ADI) based on the NOEL of 4.2 mg/kg bwt/day and using a hundredfold safety factor is calculated to be 0.04 mg/kg bwt/day. The maximum permitted intake for a 60-kg human is calculated to be 2.4 mg/day. The theoretical maximum residue contributions from the proposed tolerance is 0.000815 mg/kg/day and utilizes 2.04 percent of the ADI. This proposed tolerance and the established tolerances utilize a total of 87.56 percent of the ADI.

There are no regulatory actions pending against the registration of iprodione. The metabolism of iprodione in plants and animals is adequately understood for purposes of the tolerance. An analytical method, gas liquid chromatography using an election capture detector, is available for enforcement purposes in Vol. II of the Food and Drug Administration Pesticide Analytical Manual.

Based on the information cited above, the Agency has determined that establishing the tolerance for residues of the pesticide in or on the listed commodities will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk at the address given above. Such objections should specify

the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-602), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Section 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 5, 1987.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR Part 180 is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. Section 180.399(a) is amended by adding and alphabetically inserting the following raw agricultural commodities, to read as follows:

**§ 180.399 Iprodione; tolerance for residues.**

(a) * * *

| Commodities | Parts per million |
|---|---|
| * * * * * | * |
| Beans, dried, vine hay | 90.0 |
| Beans, dry | 2.0 |
| Beans, forage | 90.0 |
| Beans, succulent | 2.0 |
| * * * * * | * |

[FR Doc. 87-26559 Filed 11-17-87; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 405

[BERC-445-F]

## Medicare Program; Limitation on Reasonable Charges for Physician Services in Outpatient Settings

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the Medicare regulations governing reasonable charges for certain physician services furnished in outpatient settings. We are expanding the current payment limitation on these services to apply to the services of physicians who are reimbursed on a compensation-related charge basis and to surgical services that are routinely furnished in physicians' offices and are not included on the list of covered ambulatory surgical center services. These changes are being made to eliminate inappropriate Medicare payment.

**EFFECTIVE DATE:** This final rule is effective on December 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Janet McNair, (301) 597-6339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Sections 1833 and 1842 of the Social Security Act (the Act) provide that payment for most physician and other medical and health services furnished under Part B of the program (Supplementary Medical Insurance) is made on a reasonable charge basis through Medicare contractors known as carriers. There are currently some exceptions to the rule of Part B payments made on a reasonable charge basis such as hospital outpatient services, which are reimbursed on a reasonable cost basis, and diagnostic laboratory services, which are reimbursed under a fee schedule.

Under section 1842(b)(3) of the Act, when payment is made on a charge basis, the charge must be "reasonable". In determining the reasonableness of a physician's charge for Medicare purposes, carriers are required to consider the following factors and, in general, payment for the physician service is to be based on the lowest of these factors:

- The actual charge.
- The customary charge for similar services generally made by the physician furnishing the service.
- The prevailing charge in the locality for similar services. The prevailing charge may not exceed the 75th percentile of the customary charges of physicians or suppliers in the locality and an economic index limits the annual increases in prevailing charges for physician services.

On September 22, 1986, we published a proposed rule in the **Federal Register** (51 FR 33640) to make changes in the regulations governing the reasonable charge methodology (42 CFR Part 405, Subpart E) as follows:

- We proposed that, for services furnished on or after January 1, 1987, the customary charges for physicians who terminate a compensation agreement with a provider be equal to the 50th percentile of customary charges in the area rather than the physicians' compensation-related customary charges (§ 405.551).
- We proposed to expand the payment limitation on physician services furnished in outpatient settings to apply to the services of physicians who are reimbursed on a compensation-related charge basis, and to surgical services that are routinely furnished in physicians' offices and are not included in the list of covered ambulatory surgical center (ASC) services (§ 405.502).
- We proposed to allow suppliers to give less than a full warranty to beneficiaries who purchase used durable medical equipment (DME) (§ 405.514).

On March 2, 1987, we published a final rule in the **Federal Register** (52 FR 6148) concerning two of the proposals we made in the September 22 proposed rule: Payment for physicians who terminate their compensation agreements and warranties for the purchase of used DME. In that final rule, we stated that, based on the concerns of those who commented on the proposed revisions to the outpatient limit, we were postponing making those changes final until a revised ASC list of covered procedures could be published (52 FR 6150). A revised ASC list was published in the **Federal Register** on April 21, 1987 (52 FR 13176). Therefore, in this document, we are responding to the public comments we received on the outpatient limit proposal and are setting forth our final revisions to the regulations.

### III. Provisions of the Proposed Regulations

In general, Medicare payment that is made on a reasonable charge basis for similar physician services is the same regardless of the setting in which the

services are furnished. No payment distinction is made between a service furnished by a physician in his or her office and one furnished by the physician in a hospital or some other facility. However, a physician who furnishes a service in the office setting incurs related office overhead expenses (for example, salaries, equipment, and utilities) that are not incurred by the physician who furnishes services in a facility setting.

Under the authority of sections 1842(b)(3) following (F) and 1861(v)(1)(K) of the Act, regulations located at § 405.502(f) limit payment for physician services in facility outpatient settings to 60 percent of the prevailing charge for the service. The purpose of this limitation is to ensure that Medicare does not make duplicate payments for overhead expenses by paying both the facility and the physician for those overhead expenses. This limit applies to physician services furnished in hospital outpatient departments (including clinics and emergency rooms) and comprehensive outpatient rehabilitation facilities (CORFs) if the services are of the same type as services routinely furnished in physicians' offices in the local area.

As set forth in current § 405.502(f)(3), the following are the physician services that are not covered by the outpatient limit:

- Rural health clinic services.
- Surgical services furnished in an ambulatory setting.
- Certain services furnished in a hospital emergency room.
- Services of physicians who are reimbursed on a compensation-related charge basis as specified in § 405.551.
- Anesthesiology services.
- Diagnostic and therapeutic radiology services.

At 51 FR 33640, September 22, 1986 proposed rule, we proposed to eliminate the exemptions for the services of physicians who are reimbursed on a compensation-related charge basis and for certain ambulatory surgical services. The services of physicians reimbursed on a compensation-related charge basis were originally exempted by the final rule that established the outpatient limit, which was published on October 1, 1982 in the **Federal Register** (47 FR 43610). Those services were exempted because of conflicting provisions included in a proposed rule that was also published on October 1, 1982 (47 FR 43578).

Under those proposed regulations, which dealt with payment for physician services furnished in providers, combined billing would have been expanded so that payment for physician services reimbursed on a compensation-related basis would have been made to the provider and would have been subject to the reasonable compensation equivalent (RCE) limits. However, in the final rule concerning physician services furnished in providers, published on March 2, 1983 (48 FR 8902), the RCE limits were not applied to physician services furnished to individual patients and reimbursed on a compensation-related basis, and we proposed to eliminate combined billing rather than to expand it. In a subsequent final rule that dealt with the same issue, published on September 1, 1983 (48 FR 39740), combined billing was eliminated. Therefore, since these services continue to be subject to the routine reasonable charge rules, there is no basis for continuing to exempt them from the outpatient limits applicable to other physician services.

We also proposed in the September 22, 1986 proposed rule to remove the exemption for ambulatory surgical services that are not covered surgical procedures for purposes of facility payments to ASCs (§ 416.65) and that are routinely furnished in physicians' offices in the carrier's area. The current regulations exempt all surgical services furnished in a ambulatory setting. As we stated in the proposed rule, this exemption was originally established to avoid any inconsistency with statutory provisions designed to encourage the movement to ambulatory settings of certain surgical procedures that are frequently furnished on an inpatient hospital basis. Therefore, the exception should not apply to all ambulatory surgery.

It is unreasonable to apply the outpatient limit to services on the ASC list since, by definition, those services are commonly performed on an inpatient hospital basis and are not commonly performed in physicians' offices in the area. (See § 416.65.) Moreover, the application of the outpatient limit to surgical services included on the ASC list might produce a result that is inconsistent with the objective of the ASC provision, which is to encourage ambulatory surgery for the covered procedures. Applying the limit might result in higher physician payment for a surgical procedure performed on an inpatient basis than for the same procedure performed on an outpatient basis.

However, it is reasonable for the outpatient limit to apply to surgical services *not* on the ASC list that are routinely peformed in a physician's office. For those services, there is no need to promote the movement of the surgery from the inpatient to the outpatient setting because they are already routinely performed on an outpatient basis. Instead, the objective for surgical services not on the ASC list should be to make sure that Medicare does not pay twice for overhead costs when the service is performed in a facility's outpatient department. Therefore, we proposed to narrow the ambulatory surgery exception so that it exempts from the limit only those ambulatory surgical services included on the ASC list.

### III. Discussion of Pubic Comments

In response to the proposed changes, we received six items of correspondence. One commenter supported the proposal as legally appropriate and cost effective. The specific comments made by the other five commenters and our responses follow.

*Comment:* A Medicare carrier recommended that we specify the surgical procedures to which the outpatient limit will now apply so that it will be administratively easier for the carrier to implement the changes.

*Response:* As we indicated in the final rule that first established the outpatient limit for nonsurgical ambulatory services (47 FR 43611 (October 1, 1982)), we believe that each carrier should identify the specific procedures to which the limits should apply. The types of physician services that are routinely performed in physicians' offices vary from area to area depending on local medical practice. For example, certain services that are routinely performed in physicians' offices in some areas may not be performed in those offices in areas where there is a shortage of physicians. We believe that our current practice of carrier identification of services subject to the outpatient limit should continue.

*Comment:* One commenter does not believe that it is reasonable for surgical procedures to become subject to the outpatient limit because the already small reasonable charge allowances for these procedures would be lowered by a significant factor.

*Response:* We assume that physicians' actual charging practices, which are used to establish the Medicare payment allowance, reflect office practice costs. If a carrier finds that a particular procedure is performed with significant frequency in physicians' offices in the area and, thus, that physicians are incurring the full overhead expenses associated with this procedure, it is reasonable to assume that Medicare's payment allowance for the physician's office setting is adequate and includes payment for office

overhead costs. Consequently, it is reasonable for use to make appropriate reductions in the payment allowance when the same procedure is performed in a setting in which the physician does not incur the overhead costs. In these cases, payment for the overhead costs is made to the facility that is the site of services. We believe that this approach is reasonable regardless of whether individual physicians believe that the allowance itself should be greater.

*Comment:* One commenter indicated that it is incorrect for us to assume that the cost of overhead for surgical facilities is built into a surgeon's fee. However, this commenter also stated that the surgeon's fee takes into consideration all the fixed overhead costs of operating an office and that these costs are the same regardless of where the procedure is performed.

*Response:* We believe that the comment is correct in stating that when surgeons establish their fees they include overhead expenses. However, we disagree with the view that these costs or expenses are the same regardless of the site of surgery. If a surgeon performs a procedure in his or her office, the surgeon incurs facility, equipment, and personnel costs that are not incurred when the surgeon performs a procedure in a hospital outpatient department and the facility bears those costs.

*Comment:* One commenter suggested that prior to expanding the outpatient limit to apply to certain ambulatory surgical services, we should determine whether physicians have different charging patterns for procedures based upon site of service. The commenter believes that if a physician's fee for a facility-based service already reflects the absence of office overhead expenses, our proposal to subject these services to the outpatient limit could inappropriately reduce the Medicare payment for the services.

*Response:* The prevailing charge screen that is used as the basis for establishing an outpatient payment limit is the prevailing charge that is applicable when the service is performed in an office setting. In most carrier service areas, there is only one prevailing charge applicable to both office and nonoffice settings. The charge data for all settings are used to calculate the prevailing charge. Since the outpatient limit can apply only to services that are routinely office procedures in the area, it is likely that the office charges (which reflect office overhead costs) would dominate in establishing the applicable prevailing charge even if there are charge variations by site of service in the area.

In those cases in which a carrier maintains separate prevailing charge screens for office and nonoffice sites, the limit will be based on the office prevailing charge. In these cases, if the office prevailing charge reflects overhead costs while the nonoffice prevailing charge does not (as the commenter suggests may be the case), the use of the office prevailing charge to establish the outpatient limit ensures that the 40 percent reduction is not taken from a charge that already excludes overhead costs.

*Comment:* Two commenters urged that we not implement this expansion of the outpatient limit until publication of an updated ASC list of covered procedures. The commenters pointed out that we published a proposed notice in the **Federal Register** on February 16, 1984 (49 FR 6023) seeking suggestions for possible additions or revisions to the current list of procedures and that, at the time of the publication of the proposed rule, a final notice of the ASC list was under consideration by the Department.

*Response:* We agree with the commenters. Therefore, we have delayed publication of this final rule until after publication of the updated ASC list. As noted above, the revised ASC list was published in the **Federal Register** on April 21, 1987 (52 FR 13176).

*Comment:* Two commenters suggested that our proposal might lead to the unnecessary proliferation of costly surgical equipment in the office setting. The commenters indicated that if lower allowances exist for procedures performed in a facility setting, physicians might be encouraged to purchase more surgical equipment and perform these surgical procedures in their offices.

*Response:* We share the commenters, concern regarding the inappropriate proliferation of costly equipment. However, we do not believe that this would be the outcome of our expansion of the outpatient limit. First, the limit applies only to those procedures that are already routinely performed in the office setting. Thus, we are addressing a situation in which any proliferation of costly equipment into the office setting has most likely already occurred. Second, we do not believe that the payment differential for the physician will act as an incentive with respect to the setting in which the surgery is performed since the payment allowance is determined by whether or not the physician incurs the overhead expenses for the surgical procedure.

*Comment:* One commenter stated that the outpatient limit should not be applied to surgical procedures because of the rapidly changing technological advances occurring in this area. The commenter believes that these advances can frequently change the appropriateness of a certain site for a particular surgical procedure and carriers are often not familiar with these advances. Therefore, the commenter suggested that carriers not be authorized to reduce payment for surgical services based on their judgment of whether a procedure should have been performed in a physician's office rather than a hospital outpatient department.

*Response:* Application of the outpatient limit does not involve judging the appropriateness of one site over another. Instead, the limit is intended to ensure that in those cases in which procedures that are routinely performed in an office setting are performed in a facility setting, Medicare does not make duplicate payments for overhead expenses by paying the physician for overhead costs that he or she did not incur.

*Comment:* One commenter is concerned that carriers will assume that a surgical procedure is automatically subject to the outpatient limit merely because it is not included on the ASC list.

*Response:* In implementing the expanded outpatient limit, carriers will not be free to assume that a surgical procedure is routinely performed in physicians' offices merely because the procedure does not appear on the current ASC list. Clearly, it would be inappropriate for them to do so since many procedures are not included on the ASC list because they are hospital inpatient procedures that cannot be safely done outside of a hospital setting. Obviously, this limit will not apply to any of these procedures. Carriers are to apply the outpatient limit only to those services that are routinely furnished in physicians' offices.

*Comment:* One commenter pointed out that the current definition of emergency room services that are excluded from the outpatient limits (§ 405.502(f)(3)(iii)) does not reflect changes that were made to that definition by section 2318 of the Deficit Reduction Act of 1984 (Pub. L. 98-369), which was enacted on July 18, 1984. The commenter suggested that we take this opportunity to amend current § 405.502(f)(3)(iii) so that it is consistent with the law.

*Response:* Section 2318 of Pub. L. 98-369 amended section 1861(v)(1)(K) of the Act to establish a statutory definition of "bona fide emergency services" under Medicare for purposes of the exemption from the outpatient limit. Emergency services are defined as "services

provided in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—(I) placing the patient's health in serious jeopardy; (II) serious impairment to bodily functions; or (III) serious dysfunction of any bodily organ or part."

On July 17, 1985, we published a general notice in the **Federal Register** (50 FR 28988) stating that the provisions of section 2318 of Pub. L. 98–369 were self-implementing and could take effect without issuance of regulations. That notice further stated: "To the extent that the new statutory provisions conflict with our existing regulations, the provisions of the new law supersede those portions of the regulations." (51 FR 28989.) Therefore, even though § 405.502(f)(3)(iii) was not amended, the revised definition became effective on July 18, 1984. However, we agree with the commenter that we should take this opportunity to revise this section of the regulations since it is inconsistent with the law and current practice. Therefore, we have amended § 405.502(f)(3)(iii), which has been redesignated as § 405.502(f)(4)(iii) in this final rule, to include the statutory definition of emergency services.

## IV. Impact Analysis

*A. Executive Order 12291*

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for regulations that meet the criteria for a "major rule". A major rule is one that will result in—

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Based on the available data, we believe that expanding the payment limitation on outpatient services will achieve negligible savings for the Medicare program. Therefore, this final rule does not meet the criteria for a major rule, and we are not preparing a regulatory impact analysis.

*B. Regulatory Flexibility Analysis*

Consistently with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 through 612), we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that their implementation will not have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider all physicians and suppliers of DME to be small entities.

This final rule is expected to affect only a small number of physicians and to have a negligible effect on these physicians. Therefore, we have determined, and the Secretary certifies, that these regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis has not been prepared.

## V. Other Required Information

*Paperwork Reduction Act*

The proposed rule does not impose information collection requirements. Consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

**List of Subjects in 42 CFR Part 405**

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 405, Subpart E is amended as set forth below:

## PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

### Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

1. The authority citation for Subpart E continues to read as follows:

**Authority:** Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

2. Section 405.502 is amended by revising paragraph (f) to read as follows:

**§ 405.502 Criteria for determining reasonable charges.**

* * * * *

*(f) Determining charge payments for certain physician services furnished in outpatient settings*—(1) *General rule.* If physician services of the type routinely furnished in physicians' offices are furnished in outpatient settings, carriers determine the reasonable charge for those services by applying the limits described in paragraph (f)(5) of this section.

(2) *Definition.* As used in this paragraph (f), *"outpatient settings"* means—

(i) Hospital outpatient departments, including clinics and emergency rooms; and

(ii) Comprehensive outpatient rehabilitation facilities.

(3) *Services covered by limits.* The carrier establishes a list of services routinely furnished in physicians' offices in the area. The carrier has the discretion to determine which professional services are routinely furnished in physicians' offices, based on current medical practice in the area. Listed below are some examples of routine services furnished by office-based physicians.

*Examples*

Review of recent history, determination of blood pressure, ausculation of heart and lungs, and adjustment of medication.

Brief history and examination, and initiation of diagnostic and treatment programs.

Treatment of an acute respiratory infection.

(4) *Services excluded from limits.* The limits established under this paragraph do not apply to the following:

(i) Rural health clinic services.

(ii) Surgical services included on the ambulatory surgical center list of procedures published under § 416.65(c) of this chapter.

(iii) Services furnished in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(A) Placing the patient's health in serious jeopardy;

(B) Serious impairment to bodily functions; or

(C) Serious dysfunction of any bodily organ or part.

(iv) Anesthesiology services and diagnostic and therapeutic radiology services.

(5) *Methodology for developing limits*—(i) *Development of a charge base.* The carrier establishes a charge base for each service identified as a routine office-based physician service.

The charge base consists of the prevailing charge in the locality for each such service adjusted by the economic index. The carrier uses the prevailing charges that apply to services by nonspecialists in office practices in the locality in which the outpatient setting is located.

(ii) *Calculation of the outpatient limits.* The carrier calculates the charge limit for each service by multiplying the charge base amount for each service by .60.

(6) *Application of limits.* The reasonable charge for physician services of the type described in paragraph (f)(3) of this section that are furnished in an outpatient setting is the lowest of the actual charges, the customary charges in accordance with § 405.503, the prevailing charges applicable to these services in accordance with § 405.504, or the charge limits calculated in paragraph (f)(5)(ii) of this section.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare Supplementary Medical Insurance Program)

Dated: September 11, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: October 22, 1987.

**Otis R. Bowen,**

*Secretary.*

[FR Doc. 87-26534 Filed 11-17-87; 8:45 am]

BILLING CODE 4120-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

**[Docket No. FEMA 6768]**

### List of Communities Eligible for Sale of Flood Insurance; Illinois et al.

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

**EFFECTIVE DATES:** The dates listed in the fourth column of the table.

**ADDRESS:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

### PART 64—[AMENDED]

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

**§ 64.6 List of eligible communities.**

| State and Location | Community No. | Effective dates of authorization/ cancellation of sale of flood insurance in community | Current effective map date |
|---|---|---|---|
| Illinois: Maples Park, village of, Kane County. | 171020-New. | Oct. 7, 1987, Emerg. | |
| Oklahoma: Cotton County, Unicorporated areas. | 400513 | Do. | |
| Texas: Asherton, city of, Dimmit County | 480790 | Sept. 30, 1981, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.; Oct. 1, 1987, Rein. | Sept. 1, 1987. |
| Iowa: Lime Spring, town of, Howard County [1]. | 190417 | Jan. 24, 1977, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.; Oct. 6, 1987, Rein. | Jan. 24, 1977. |
| Pennsylvania: Ceres, township of, McKean County. | 421853 | Aug. 6, 1974, Emerg.; Sep. 18, 1987, Reg.; Sept. 18, 1987, Susp.; Oct. 8, 1987, Rein. | Sept. 18, 1987. |

| State and Location | Community No. | Effective dates of authorization/ cancellation of sale of flood insurance in community | Current effective map date |
|---|---|---|---|
| Hickory, town of, Forest County | 421646 | Dec. 17, 1975, Emerg.; Nov. 19, 1986, Reg.; Nov. 19, 1986, Susp.; Oct. 8, 1987, Rein. | Nov. 19, 1986. |
| Arkansas: Baxter County, Unicorporated areas. | 050010 | May 17, 1977, Emerg.; Oct. 6, 1987, Withdrawn. | Jan. 18, 1983. |
| Kentucky: Oldham County, Unicorporated areas. | 210185 | Mar. 10, 1987, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.; Oct. 13, 1987, Rein. | Aug. 19, 1987. |
| Missouri: Mokane, village of, Callaway County. | 290052 | Sept 24, 1974, Emerg.; Sept 18, 1986, Reg.; Sept 18, 1986, Susp.; Oct. 16, 1987, Rein. | Sept. 18, 1987. |
| Pennsylvania: Porter, township of, Schuylkill County. | 422016 | Aug 18, 1975, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; Oct 19, 1987, Rein. | Sept. 1, 1986. |
| Michigan: | | | |
| Howell, city of, Livingston County | 260441 | Dec. 8, 1975, Emerg.; Aug 4, 1987, Reg.; Aug. 4, 1987, Susp.; Oct. 19, 1987, Rein. | Aug. 4, 1987. |
| Standish, township of, Arenac County | 260017 | May 25, 1973, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.; Oct. 19, 1987, Rein. | Do. |
| New York: | | | |
| Unadilla, village of, Otsego County | 361044 | July 28, 1975, Emerg.; Sept. 30, 1987, Reg.; Sept. 30, 1987, Susp.; Oct. 21, 1987, Rein. | Sept. 30, 1987. |
| Palatine, town of, Montgomery County. | 361413 | Mar. 8, 1977, Emerg.; May 4, 1987, Reg.; May 4, 1987, Susp.; Oct. 21, 1987, Rein. | May 4, 1987. |
| Ohio: Loudonville, village of, Ashland and Holmes Counties. | 390009 | July 22, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug 1, 1987, Susp.; Oct. 22, 1987, Rein. | Aug. 1, 1987. |
| Minnesota: Belle Plaine, city of, Scott County. | 270429 | Sept. 25, 1974, Emerg.; Dec. 18, 1986, Reg.; Dec. 18, 1986, Susp.; Oct. 22, 1987, Rein. | Dec. 18, 1986. |
| Colorado: Longmont, city of, Boulder County. | 080027 | Nov. 26, 1971, Emerg.; July 5, 1977, Reg.; July 5, 1977, Susp.; Sept. 23, 1977, Rein,; Sept. 18, 1987, Susp.; Oct. 22, 1987, Rein. | Sept. 18, 1987. |
| California: Encinitas, city of, San Diego County. | 060726 | Oct. 22, 1987, Emerg. | |
| Michigan: | | | |
| Owosso, township of, Shiawassee County. | 260809 | Do. | |
| Turner, village of, Areance County | 260550 | Do. | Mar. 14, 1978. |
| Delaware: Elsmere, town of, New Castle County. | 100023 | June 11, 1975, Emerg.; Sept. 18, 1987, Reg.; Sept. 18, 1987, Susp.; Oct. 26, 1987, Rein. | Sept. 18, 1987. |
| Pennsylvania: Cogan House, township of, Lycoming County.[1] | 421838 | Feb. 5, 1981, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp.; Oct. 26, 1987, Rein. | June. 1, 1987. |
| Oklahoma: Wapanuka, town of, Johnson County.[1] | 400337 | June 7, 1979, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.; Oct. 26, 1987, Rein. | Sept. 1, 1987. |
| North Dakota: Creel, township of, Ramsey County.[1] | 380625 | June 18, 1979, Emerg.; Sept. 30, 1987, Reg.; Sept. 30, 1987, Susp.; Oct. 26, 1987, Rein. | Sept. 30, 1987. |
| West Virginia: Hampshire County, Unicorporated areas.[1] | 540226 | Jan. 19, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; Oct. 28, 1987, Rein. | Aug. 1, 1987. |
| New Mexico: Los Alamos County, Unincorporated areas.[1] | 350035 | Nov. 25, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.; Oct. 30, 1987, Rein. | Sept. 1, 1987. |
| Texas: Grandfalls, city of, Ward County.[1] | 480643 | July 7, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; Oct, 30, 1987, Rein. | Aug. 1, 1987 |
| **Region I—Regular Conversion** | | | |
| Maine: Topsham, town of, Sagadahoc County. | 230122 | Oct. 16, 1987, Suspension Withdrawn | Oct. 16, 1987. |

[1] Minimals.

*Code for reading 4th column:* Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein—Reinstatement.

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 87-26544 Filed 11-17-87; 8:45 am]

BILLING CODE 6718-03-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 650

[Docket No. 51222-6240]

### Atlantic Sea Scallop Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Temporary adjustment of the meat count standard.

**SUMMARY:** NOAA issues this notice to implement a temporary adjustment of the meat count standard for the Atlantic sea scallop fishery. This action increases the average meat count standard to 33 meats per pound through January 1988. The shell height standard will remain at 3½ inches. The intended effect is to compensate for the seasonal loss in scallop meat weight that occurs during spawning.

**EFFECTIVE DATES:** November 18, 1987 through January 31, 1988.

**FOR FURTHER INFORMATION CONTACT:** Carol Kilbride (Scallop Management Coordinator, NMFS), 617-281-3600, ext. 331.

**SUPPLEMENTARY INFORMATION:** Regulations at 50 CFR Part 650 implementing the Fishery Management Plan for Atlantic Sea Scallops (FMP) require the Regional Director, Northeast Region, NMFS (Regional Director), to review annually the status of the Atlantic sea scallop resource and identify any changes needed in the management program. Additionally, these regulations provide authority to the Regional Director to adjust temporarily the management standards (meat count measure) upon finding that specific criteria are met. These criteria include the findings that (1) the objective of the FMP would be achieved more readily and be better served through an adjustment; (2) the recommended alteration would not reduce expected catch over the following year by more than five percent from that which would have been expected under the prevailing standard; (3) the recommended standards for meat count and shell height are consistent with each other; and (4) fifty percent of the harvestable biomass is at scallop sizes smaller than those consistent with the prevailing meat count standards, and that a temporary relaxation of the standards would not jeopardize future recruitment to the fishery.

The New England Fishery Management Council (Council), which prepared the FMP, has recommended that the Regional Director implement a temporary adjustment to the sea scallop meat count standard by increasing it from 30 to 33 meats per pound through January 31, 1988. In accordance with the regulations, a public hearing was held on October 29, 1987, to receive comments on this recommendation. Industry representatives from both New England and mid-Atlantic States voiced overwhelming support for this adjustment.

The Council believes that a seasonal adjustment in the meat count standard is necessary to account for the natural loss in meat weight during spawning. Amendment 2 to the FMP, now being prepared by the Council, proposes to introduce such a seasonal adjustment into the management program. This amendment was submitted for review by the Secretary of Commerce on September 15, 1987, but was returned to the Council on October 2, 1987, for statutory deficiencies. Amendment 2 will be resubmitted very shortly. However, in the interim, the Council has decided to pursue a temporary meat count adjustment under the existing FMP provision. This action is intended to accomplish the same result as Amendment 2, but in a more timely fashion.

As required by the regulations implementing the FMP, the Regional Director has reviewed the status of the resource and finds that the four criteria listed above, necessary to make a temporary adjustment, have been met.

First, the Regional Director finds that the objective of the FMP would be achieved more readily by this action. In designating the present 30 meat count trip standard, the FMP assumed that scallops become subject to capture at four years of age and that scallops grow with a continous increase in meat weight. Subsequently, it has been scientifically demonstrated that during the spawning season spawning scallops lose meat weight, which means that some scallops that have reached harvestable age may not meet the 30 meat count standard. The original FMP underestimated the effects of spawning weight loss on the 30 meat count standard. Because of the reduced meat weights from spawning, there is a reduced availability of harvestable age-four scallops that meet the 30 meats-per-pound standard, and consequently, there are associated adverse and unanticipated economic effects on the industry. A slight increase in the meat count standard during the spawning season will compensate for these spawning-related meat weight changes; it should also assist fishermen's compliance with the meat count standard during this time. The Council believes that the management objective of the FMP will be better served by this adjustment of the meat count measure: The overall management objective is to maximize over time the joint social and economic benefits from the harvesting and use of the sea scallop resource.

Second, the Regional Director finds that this temporary adjustment will not reduce the expected catch over the following year by more than five percent from that expected under the prevailing standard. Analysis prepared by the Council estimates that a temporary increase in the meat count standard to 33 meats per pound for a four-month period would decrease the long-term catch by only 1.5 percent. Catches are expected to increase in 1988 and 1989 due to excellent incoming recruitment, and this action is not expected to result in a reduced catch.

Third, the Regional Director also has determined that because of the loss in meat weight which naturally accompanies spawning, a temporary adjustment in the meat count standard to 33 meats per pound will provide greater consistency between the two seasonal standards since the shell height standard will remain at 3½ inches.

Fourth, the Northeast Fisheries Center reports that approximately 62 percent of the harvestable biomass is of a size smaller than the prevailing meat count standard. Therefore, the Regional Director has determined that the 50 percent criterion has been met.

### Other Matters

This action is taken under the authority of 50 CFR Part 650, and complies with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

### List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: November 13, 1987.

**Bill Powell,**

*Executive Director, National Marine Fisheries Service.*

[FR Doc. 87-26597 Filed 11-17-87; 8:45 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 52, No. 222
Wednesday, November 18, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 51

### Tomatoes; Grade Standards

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Advance notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Agricultural Marketing Service (AMS) invites public comment on suggested changes to the size section of the United States Standards for Grades of Fresh Tomatoes. The suggested changes would (1) require that the size of the tomatoes in any container be specified on the container; (2) establish four mandatory size designations with a 2/32 inch overlap; and (3) eliminate the commingling of different sizes within a package. Views and comments are solicited from interested parties on the suggested changes.

**DATE:** Comments must be submitted on or before January 19, 1988.

**ADDRESS:** Interested persons are invited to submit written comments, in duplicate, to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2085, South Building, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Paul Manol, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456 (202) 447–5410..

**SUPPLEMENTARY INFORMATION:** The United States Standards for Grades of Fresh Tomatoes were last amended in December 1976. The Florida Tomato Committee, the Florida Tomato Exchange, and the California Fresh Market Tomato Advisory Board have requested that §51.1859 of the United States Standards for Grades of Fresh Tomatoes (7 CFR 51.1859) be amended (1) to require that the size of tomatoes in any container be specified on the container, (2) to eliminate the commingling of different sizes within a package, and (3) to establish four new size designations with a 2/32 inch overlap between each size designation.

The current standards do not require that the size be specified on the container. However, the current standards do provide that when the size of tomatoes is specified according to the size designations of § 51.1859, the size of the tomatoes must be within the diameters. There is no overlap between size designations specified in that section. The size designations and specified minimum and maximum diameter of the current standards are:

| Size designations, | Minimum diameter | Maximum diameter |
|---|---|---|
| Extra small | 1 28/32 | 2 4/32 |
| Small | 2 4/32 | 2 9/32 |
| Medium | 2 9/32 | 2 17/32 |
| Large | 2 17/32 | 2 28/32 |
| Extra Large | 2 28/32 | 3 15/32 |
| Maximum Large | 3 15/32 | |

The revisions recommended for consideration by the listed industry groups would change the size designations and diameter requirements for each size as specified below. The suggested revisions would provide for a 2/32 inch overlap between sizes.

| Size designations, | Minimum diameter | Maximum diameter |
|---|---|---|
| Small | 2 5/32 | 2 10/32 |
| Medium | 2 8/32 | 2 18/32 |
| Large | 2 16/32 | 2 26/32 |
| Extra large | 2 24/32 | |

In addition, the recommended revisions would for the first time require size markings on all containers in conformity with the new size designations listed above. It would also eliminate the commingling of different sizes in a single container.

The groups recommending these revisions contend that the requested changes would promote more uniform trading practices for the industry. They also assert that size overlapping would eliminate what they believe to be difficulty in sizing tomatoes to meet existing size requirements which were developed prior to the introduction of varieties which are characteristically obling as opposed to the more traditional spherical-shaped varieties.

The United States Standards for Fresh Tomatoes appear in §§ 51.1855 through 51.1879 of Part 51. These standards are issued under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). Application of these standards is voluntary under the 1946 Act. However, Marketing Order No. 966 (7 CFR Part 966) regulates the handling of tomatoes grown in Florida. The marketing order is issued under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c). Pursuant to Marketing Order No. 966, grade, size, container, and inspection requirements are issued in a handling regulation for the period October 10 through June 15 of each marketing season (7 CFR 966.323). The handling regulation is applicable to fresh tomatoes grown in the designated production area and shipped outside the regulated area. Tomatoes handled under Order No. 966 must meet certain of the grade, size, and container requirements specified in the United States Standards for Fresh Tomatoes. Therefore, the recommended revisions may have more commercial significance than would otherwise be the case.

In addition, section 8e of the Agricultural Marketing Agreement Act (AMAA) provides that whenever specified commodities, including tomatoes, are regulated under a Federal Marketing Order, imports of that commodity are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Therefore, any suggested revision with respect to grade, size, quality, and maturity requirements would be made applicable to imported tomatoes during any period in which a handling regulation under a marketing order was in effect.

This request for public comment does not constitute notification that the suggested revisions to the fresh tomato standards or inspection procedures described in this document are or will be proposed or adopted.

The U.S. Department of Agriculture encourages public participation and solicits views on any changes which may improve the official grading

standards and inspection procedures. Accordingly, views and comments are solicited from interested parties on the suggested changes or on other possible revisions to the current official grading practices relating to the size section of the United States Standards for Grades of Fresh Tomatoes.

Done at Washington, DC, on November 12, 1987.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 87-26481 Filed 11-17-87; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 87-NM-123-AD]**

## Airworthiness Directives; British Aerospace Aircraft Group Model H.S. 748 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes an airworthiness directive (AD), applicable to certain British Aerospace (BAe) Model H.S. 748 series airplanes, that would require inspection and modification of the lower wing skins in the area of the inboard engine rib, on airplanes which were modified in accordance with BAe Service Bulletins 57/31, 57/32, or 57/33. This proposal is prompted by reports of cracks in the skin at the forward attachment bolt hole for the cam plate support bracket on airplanes previously repaired. It is now necessary to remove the existing repair, further inspect the existing cracks, inspect for possible new cracks, and to incorporate a new repair. This condition, if not corrected, could lead to reduced structural capability of the wing.

**DATE:** Comments must be received no later than December 29, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-123-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-123-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

### Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain BAe Model H.S. 748 airplanes. There have been reports of cracks in the lower wing skins in the area of the inboard engine rib and stringers 5 through 9. The FAA had previously issued AD 83-24-01, Amendment 39-4770 (48 FR 52571; November 21, 1983), which requires inspections for cracks in this same area of the lower wing skins (in the area of the inboard engine rib and stringers 5 through 9), and repair, if necessary, in accordance with British Aerospace (BAe) Service Bulletin 57/34, Revision 3, dated March 3, 1983. Some of the cracks found recently, however, had been temporarily repaired in accordance with BAe Service Bulletins 57/31, 57/32, or 57/33. These repairs were originally given a lifetime of 5,000 hours. This life limit, however, was changed to an "on condition" status, subject to the results of a sampling inspection program. The sampling program showed that the "on condition" inspection is inappropriate, since cracks continued to form. This condition, if not corrected, could lead to reduced structural capability of the wing.

British Aerospace issued BAe Service Bulletins 57/81, Revision 1, dated October 1985, and 57/82, Revision 1, dated November 1985, which describe inspections, repairs, and a modification to the lower wing skins to correct this condition. The CAA has classified these service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection and modification in accordance with the BAe Service Bulletins previously mentioned. The requirements of the proposed AD would apply only to those BAe H.S. 748 series airplanes previously modified in accordance with BAe Service Bulletins 57/31, 57/32, or 57/33.

It is estimated that 5 airplanes of U.S. registry would be affected by this AD, that it would take approximately 300 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are estimated to be $5,000 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $85,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic

impact on a substantial number of small entities because few, if any, Model BAe H.S. 748 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**British Aerospace:** Applies to all Model HS 748 series airplanes, which have been modified in accordance with British Aerospace (BAe) Service Bulletins 57/31, 57/32, or 57/33, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent further cracking which could lead to reduced structural capability of the wing, accomplish the following:

A. On airplanes previously modified in accordance with BAe Service Bulletin 57/31 or 57/33, inspect and modify the lower wing skins in accordance with BAe Service Bulletin 57/81, Revision 1, dated October 1985, prior to 7,500 hours since modifications per 57/31 or 57/33 or within the next 750 hours time-in-service after the effective date of this AD, whichever occurs later.

B. On airplanes previously modified in accordance with BAe Service Bulletin 57/32, inspect and modify the lower wing skins in accordance with BAe Service Bulletin 57/82, Revision 1, dated November 1985, prior to 10,000 hours since modification per 57/32 or within the next 750 hours time-in-service after the effective date of the AD, whichever occurs later.

C. Any cracks found by the above inspections must be repaired, prior to further flight, in accordance with BAe Service Bulletin 57/81, Revision 1, dated October 1985, or BAe Service Bulletin 57/82, Revision 1, dated November 1985, as applicable.

D. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle Washington.

Issued in Seattle, Washington, on November 9, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-26507 Filed 11-17-87; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 87-NM-146-AD]**

## Airworthiness Directive; British Aerospace Model HS 748 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to British Aerospace Model HS 748 series airplanes, which would require inspection and reorientation, if necessary, of the flight controls spring strut rudder lock control. This action is prompted by the potential for interference between the strut aft fasteners and the lower aft edge of the slotted hole in the rudder hinge box. This condition, if not corrected, could adversely affect operation of the rudder, and reduce controllability of the airplane.

**DATE:** Comments must be received no later than January 15, 1988.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (ATTN: ANM-103), Attention: Airworthiness Docket No. 87-NM-146-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service bulletin may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest- Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest-Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

**Availability of NPRM**

Any person may obtain a copy of this notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-146-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**Discussion**

The United Kingdom Civil Aviation Authority (CAA), has, in accordance with the provision of an existing bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on British Aerospace Model HS 748 series airplanes. It has been reported that interference between the spring strut aft fasteners and the lower aft edge of the slotted hole in the rudder hinge box may exist. This condition, if not corrected, could lead to reduced controllability of the airplane.

British Aerospace has issued HS 748 Service Bulletin 27/109, dated October 29, 1985, which describes procedures for re-orienting the spring strut rudder lock

to prevent the possibility of interference between the strut and the lower rudder hinge box. The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the reorientation, if necessary, of the spring strut rudder lock control to prevent the possibility of interference between the strut and the lower rudder hinge box, in accordance with the service bulletin previously mentioned.

It is estimated that 3 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $600.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($200). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**British Aerospace:** Applies to Model HS 748 series airplanes, certificated in any category. Compliance required within 60 days after the effective date of this AD, unless already accomplished.

To prevent reduced controllability of the airplane caused by interference between the spring strut rudder lock control and the lower rudder hinge box, accomplishe the following:

A. Inspect the spring strut rudder lock control and reorient, if necessary, in accordance with British Aerospace HS-748 Service Bulletin 27/109, dated October 29, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

C. Airplanes may be flown to a maintenance base for repairs or replacements in accordance with FAR 21.197 and 21.199.

All persons affected by this airworthiness directive who have not already received copies of the appropriate service bulletin from the manufacturer may obtain copies upon request to British Aerospace PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This document may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way, Seattle, Washington.

Issued in Seattle, Washington, on November 9, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-26508 Filed 11-17-87; 8:45 am]

**BILLING CODE 4910-13-M**

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**14 CFR Part 39**

**[Docket No. 87-NM-137-AD]**

## Airworthiness Directives; SAAB-Fairchild Model SF-340A Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to amend an existing airworthiness directive (AD), applicable to SAAB-Fairchild Model SF-340A airplanes, which currently requires the use of continuous ignition during operations in icing conditions to prevent engine flameout due to ice ingestion. This action would permit an optional installation of an automatic ignition system which operates the ignition when necesary to prevent engine flameout.

**DATES:** Comments must be received no later than January 7, 1988.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-137-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB-SCANIA, Product Support, S-58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

**Availability of NPRM**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules

Docket No. 87-NM-137-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**Discussion**

On July 25, 1986, the FAA issued AD 85-26-51, Amendment 39-5376 (51 FR 27527; August 1, 1986), to require a series of operating restrictions in response to several reported incidents of engine flameouts on SAAB-Fairchild SF-340A airplanes due to ingestion of ice. Specifically, the use of a manually activated continuous ignition was required during all operations when icing conditions may occur.

Since issuance of that AD, the manufacturer has developed an automatic ignition system which activates when compressor discharge pressure (P3) drops below 70 psi and the power levers are above flight idle. Prior to ice ingestion, this system would be activated automatically so as to prevent ingestion of ice and resultant engine flameout. It would also prevent excessive replacement of igniters caused by continuous use of ignition and would enhance system reliability.

The FAA has reviewed and approved SAAB Service Bulletin SF340-74-004, dated October 24, 1986, which describes the installation of an automatic ignition system (Mod #1414).

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an amendment to AD 85-26-51 is proposed that would permit the optional installation of the automatic ignition system in accordance with the service bulletin previously mentioned.

It is estimated that 50 airplanes of U.S. registry would be affected by this amendment, that it would take approximately 50 manhours per airplane to accomplish the modification, and that the average labor cost would be $40 per manhour. Based on these figures, the cost of the optional modification to U.S. operators, should they choose to incorporate it, is estimated to be $2,000 per airplane.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance with this amendment per airplane ($2,000). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend §39.13 of Part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By amending AD 85-26-51, Amendment 39-5376 (51 FR 27527; August 1, 1986), by revising paragraph B.2. as follows:

**SAAB-Fairchild:** Applies to all Model SF-340A series airplanes, certificated in any category. Compliance as shown below.

To minimize the hazards associated with engine flameout due to potential ice ingestion, accomplish the following, unless previously accomplished:

A. Prior to further flight, install a continuous ignition switch by incorporating the provisions of SAAB-Fairchild SF-340 Service Bulletin SF340-74-002, Revision 1, dated December 15, 1985.

B. Incorporate the following into the limitations section of the airplane flight manual. This may be accomplished by including a copy of this AD in the airplane flight manual.

1. Takeoff in conditions of slush on the runway is prohibited unless Modification 1185, "Nacelle—Exhaust Nozzle—Improved Drainage and Ventilation of Inlet Protection Device (IPD) and Special Inspection," as described in SAAB-Fairchild Service Bulletin SF340-54-002, Revision 1, dated April 3, 1985, has been accomplished.

2. Turn the engine and propeller anti-ice systems on and set the ignition ("IGN") switch to the continuous ("CONT") position during all operation in which icing could reasonably be expected to occur and for a period of five minutes after these conditions no longer exist. When Modification 1414, "Ignition—Introduction of Auto Ignition System," has been accomplished in accordance with SAAB Service Bulletin SF340-74-004, dated October 24, 1986, or a production equivalent, set the ignition switch to the "NORM" position."

3. In the definition of icing conditions stated in the FAA-approved flight manual on page 2-11, change the temperature stated in "Icing Conditions," paragraph 1, line 4, from "5° C" to "10° C," unless Modification 1319, "Installation of New Lower Inlet, IPD and Exhaust Nozzle," as described in SAAB-Fairchild Service Bulletin SF340-71-017, dated November 22, 1985, has been accomplished. If this modification has been accomplished, "5° C" can remain in the definition.

C. Conduct engine performance monitoring in accordance with General Electric Operating Engineering Bulletin (OEB) 2, Revision 4, dated December 14, 1985, or later FAA-approved revision.

D. Prior to further flight, and at intervals specified in General Electric OEB 4, Revision 4, dated December 14, 1985, or later FAA-approved revisions, perform an inspection and perform maintenance, as necessary, of the ignition system in accordance with that OEB.

E. Unless Modification 1319, as described in paragraph B.3., above, has been accomplished, in the event of an icing encounter, an inspection must be accomplished prior to the next departure to assure that no snow, ice, or slush accumulation is present in or around the inlet or the inlet protection device.

F. Following each flameout or re-ignition event, conduct an inspection of Stage 1 compressor blades, in accordance with General Electric OEB 4, Revision 4, dated December 14, 1985, or later FAA-approved revisions.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to SAAB Scania, Product Support, S-58188, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 5, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-26501 Filed 11-17-87; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

**[Airspace Docket No. 87-AAL-3]**

## Control Zone and Transition Area; Proposed Establishment of Amchitka Island, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish the Amchitka Island, AK, Control Zone and Transition Area. The United States Navy (USN) is activating the Amchitka Island Airport to support the installation and commissioning of the Relocatable Over the Horizon Radar (ROTHR) Facility. This action would provide controlled airspace for departure and arrival aircraft in that terminal area.

**DATES:** Comments must be received on or before December 28, 1987.

**ADDRESSES:** Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 87-AAL-3, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AAL-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Amchitka Island, AK, Control Zone and Transition Area. The USN is activating the Amchitka Island Airport to support the installation and commissioning of the ROTHR Facility. An airport advisory service will be installed to meet criteria for control zone requirements. This action would accommodate instrument procedures for arrival and departure aircraft from that terminal. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and rountine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of

Defense in accordance with the provisions of Executive Order 10854.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones and transition areas.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Amchitka Island, AK [New]**

Within a 5-mile radius of Amchitka Island Airport (lat. 51°22'37"N., long. 179°15'57"E.).

**§ 71.181 [Amended]**

3. Section 71.181 is amended as follows:

**Amchitka Island, AK [New]**

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Amchitka Airport (lat. 51°22'37"N., long. 179°15'57"E.); within 2 miles each side of the 263° bearing from the Amchitka Island Airport extending from the 8.5-mile radius to 14 miles west; within 2 miles north of the 063° bearing and 2 miles south of the 077° bearing from the Amchitka Island Airport, extending from the 8.5-mile radius to 14 miles east.

Issued in Washington, DC, on November 3, 1987.

**Shelomo Wugalter,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 87-26506 Filed 11-17-87; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

**[Airspace Docket No. 87-ASO-14]**

## Proposed Designation of Transition Area; Bonifay, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to designate the Bonifay, Florida, transition area to accommodate instrument flight rules (IFR) operations at Tri County Airport. This action will lower the base of controlled airspace from 1200 to 700' above the surface in the vicinity of the airport. An instrument approach procedure is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations.

**DATE:** Comments must be received on or before: December 15, 1987.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 87-ASO-14, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

**FOR FURTHER INFORMATION CONTACT:** Earnest Joyce, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASO-14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Bonifay, Florida, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Tri County Airport. If the proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation Safety, Transition area.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

## PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended by adding a new designation as follows:

**Bonifay, Florida (new)**

That airspace extending upward from 700' above the surface within a 6.5 mile radius of Tri County Airport (Lat. 30°51'30"N; Long. 85°36'00"W), within 3 miles either side of the 010° bearing from the Tri County NDB (Lat. 30°51'05"N; Long. 85°36'05"W) extending from the 6.5 mile radius to 8.5 mile radius north of the NDB.

Issued in East Point, Georgia, on October 27, 1987.

**William D. Wood,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 87-26504 Filed 11-17-87; 8:45 am]

**BILLING CODE 4910-13-M**

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## 14 CFR Part 71

**[Airspace Docket No. 87-ASO-13]**

## Proposed Designation of Transition Area; Jackson, KY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to designate the Jackson, Kentucky transition area to accommodate instrument flight rule (IFR) operations at Julian Carrol Airport. This action will lower the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations.

**DATE:** Comments must be received on or before December 15, 1987.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 87-ASO-13, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone; (404) 763-7646.

**FOR FURTHER INFORMATION CONTACT:** Ernest Joyce, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASO-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

### The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Jackson, Kentucky transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Julian Carrol Airport. If the proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

## PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended by adding a new designation as follows:

**Jackson, Kentucky (New)**

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Julian Carrol Airport (Latitude 37°35'19" N, Longitude 83°19'03" W); within 2.5 miles either side of the 348° radial from hazard VOR (Latitude 30°23'23" N, Longitude 83°15'59" W) extending from the 6.5 mile radius to 7.5 miles south of the airport.

Issued in East Point, Georgia, on October 27, 1987.

William D. Wood,

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 87-26505 Filed 11-17-87; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 71

**[Airspace Docket No. 87-ASW-48]**

## Proposed Amendment of Transition Area; Lake Charles, LA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the transition area at Lake Charles, LA. This amendment is necessary since a new standard instrument approach procedure (SIAP) to Runway 15 at Chennault Industrial Airpark, Lake Charles, LA, has been developed. The intended effect of this proposed amendment is to provide additional controlled airspace for aircraft executing the new SIAP. Coincident with this proposed amendment, the status of the Chennault Industrial Airpark will change from visual flight rules (VFR) to instrument flight rules (IFR).

**DATE:** Comments must be received on or before December 18, 1987.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87-ASW-48, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-48." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

### The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by amending the transition area at Lake Charles, LA. This amendment is necessary since an SIAP to Runway 15 at Chennault Industrial Airpark has been developed. This amendment will result in additional controlled airspace around the Chennault Industrial Airpark. The intended effect of this amendment is to ensure segregation of IFR aircraft flying the new SIAP and other aircraft operating VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

## PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

### § 71.181 [Amended]

2. Section 71.181 is amended as follows:

**Lake Charles, LA [Revised]**

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Lake Charles Municipal Airport (lat. 30°07'32"N., long. 93°13'22"W.) and within an 8.5-mile radius of the Chennault Industrial Airpark (lat. 30°12'37"N, long. 93°08'35"W.).

Issued in Fort Worth, TX, on November 2, 1987.

Larry L. Craig,

*Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 87-26500 Filed 11-17-87; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[LR-81-87]**

## Deposits of Estimated Tax Payments of Certain Trusts and Estates

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains a proposed regulatory amendment that would require certain banks and financial institutions to deposit estimated income tax payments with respect to taxable trusts and estates for which they act as fiduciaries through the Federal Tax Deposit (FTD) system instead of forwarding them to an Internal Revenue Service Center. The amendment would affect certain financial institutions which are authorized depositaries for Federal taxes and which act as fiduciaries for at least 50 taxable trusts or estates.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by January 4, 1988. The amendments are proposed to be effective for taxable years beginning after December 31, 1987.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-81-87), 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** John A. Tolleris of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3829).

**SUPPLEMENTARY INFORMATION:**

## Background

This document contains a proposed amendment to the Income Tax Regulations under section 6302 (c) of the Internal Revenue Code of 1986 relating to deposits of certain quarterly estimated income tax payments required to be made by estates and trusts under section 6654(l) of the Internal Revenue Code of 1986. The amendment is proposed to be issued under the authority of sections 6302 (c) and 7805 of the Internal Revenue Code of 1986.

## Explanation of Provisions

The proposed amendment would, if promulgated as a Treasury decision, require certain banks and financial institutions to deposit through the Federal Tax Deposit (FTD) system the quarterly estimated income tax payments relating to certain taxable estates and trusts for which such institutions act as fiduciaries, instead of delivering the payments to an Internal Revenue Service Center as is presently required.

The requirement that quarterly estimated income tax payments be made for certain trusts and estates was enacted in section 1404(a) of the Tax Reform Act of 1986. The Service had required all estimated tax payments for the 1987 taxable year with respect to trusts and estates to be delivered to an Internal Revenue Service Center along with a Form 1041-ES estimated tax voucher. The Service has experienced administrative difficulties in processing a single payment from fiduciaries in payment of estimated tax with respect to a large number of trusts and estates administered by such fiduciaries. The proposed amendment would help resolve these difficulties by requiring certain financial institutions to pay estimated tax with respect to estates and trusts for which they act as fiduciaries through the FTD system and to make magnetic tape reports of such payments in accordance with a revenue procedure to be published. The institutions subject to this requirement would be those which have Treasury Tax & Loan (TT&L) accounts for deposited Federal taxes and which administer at least 50 trusts or estates required to make estimated tax payments during the current calendar year.

Other fiduciaries which do not have TT&L accounts and which wish to make a single estimated tax payment with respect to a large number of trusts and estates for which they act as fiduciaries will be permitted to elect to make such payments through the FTD system in accordance with the procedures to be established in the above-mentioned revenue procedure.

## Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. It has been certified that this rule will not have a significant impact on a substantial number of small entities because the proposed regulations would be applicable only to financial institutions which administer a large number of trusts and estates actually required to make estimated tax payments. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

## Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on the requirements to OMB also send copies of those comments to the Service.

## Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

## Drafting Information

The principal author of these proposed regulations is John A. Tolleris of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

## List of Subjects

*26 CFR 1.6302-1—1.6302-3*

Income taxes, Administration and procedure, Tax depositaries.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

*Proposed Amendments to the regulations*

The proposed amendments to 26 CFR Parts 1 and 602 are as follows:

## Income Tax Regulations

## PART 1—[AMENDED]

**Paragraph 1.** The authority for Part 1 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805. * * * Section 1.6302-3 also issued under 26 U.S.C. 6302 (c). * * *

**Par. 2.** A new § 1.6302-3 is added immediately following § 1.6302-2 to read as follows:

**§ 1.6302-3 Use of Government depositaries in connection with estimated taxes of certain estates and trusts.**

(a) *Requirement.* A bank or other financial institution described in

paragraph (b) of this section shall deposit in its Treasury Tax & Loan account described in 31 CFR Part 203 or with a Federal Reserve bank all payments of estimated tax required to be paid for taxable years beginning after December 31, 1987, under section 6654(l) with respect to estates and trusts for which such institution acts as a fiduciary on or before the date otherwise prescribed for paying such tax.

(b) *Banks and financial institutions subject to this requirement.* The requirement of paragraph (a) of this section applies to banks and other financial institutions described in sections 581 and 591 which have been designated as authorized Federal tax depositaries described in section 6302(c) and which act as fiduciaries for at least 50 trusts or estates to which section 6654(l) applies that during the calendar year are required to make installment payments of estimated tax with respect to such trusts or estates.

(c) *Crossreferences.* For provisions relating to the procedures for depositing the estimated tax payments described in paragraph (a) of this section and for reporting such deposits on magnetic tape, see the applicable revenue procedure. For provisions relating to the penalty for failure to make a deposit within the prescribed time, see § 301.6656–1 of this chapter [Regulations on Procedure and Administration).

**OMB Control Numbers Under the Paperwork Reduction Act**

**PART 602—[AMENDED]**

**Par. 3.** The authority citation for Part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**§ 602.101 [Amended]**

**Par. 4.** Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.6302–3 * * * 1545–0971".

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

[FR Doc. 87–26539 Filed 11–13–87; 12:56 pm]

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**26 CFR Parts 48 and 301**

**[LR–115–86]**

## Tax on Sale or Removal of Gasoline

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations and a notice of a public hearing relating to the imposition of an excise tax on the removal or sale of gasoline by a refiner, importer, terminal operator, throughputter, blender, or compounder. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1986. These regulations provide guidance to gasoline refiners, importers, terminal operators, blenders, compounders, throughputters, and certain taxpayers that file for credit or refund of the gasoline excise tax.

**DATES:** Written comments and/or requests to appear at a public hearing scheduled for 10:00 a.m. on January 5, 1988 must be delivered or mailed by December 18, 1987. These regulations are proposed to be effective for gasoline sold or removed after December 31, 1987.

**ADDRESS:** Send comments and requests to appear at the public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–115–86), Washington, DC 20224. The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Timothy J. McKenna of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202–566–3287 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains proposed amendments to the manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) under sections 4081–4083, 4101, 6421, and 6427 of the Internal Revenue Code of 1986 (Code). These amendments are proposed to clarify the regulations under the relevant Code sections and conform the regulations to changes made by section 1703 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2774) (The Act).

### In General

The proposed regulations provide guidance to refiners, importers terminal operators, blenders, compounders, and throughputters relating to the gasoline excise tax imposed under section 4081. Guidance is also provided to taxpayers that file for a credit or refund with respect to the excise tax. In general, these regulations provide for: (1) Imposition of the tax and recordkeeping requirements, (2) registration and bond requirements, and (3) procedures certain taxpayers must follow to obtain a credit or refund for tax paid.

### Imposition of Tax

Section 4081 of the Code and § 48.4081–1(a) (1) and (2) of the proposed regulations generally impose a tax on the earlier of the removal or sale of gasoline by the refiner, importer, terminal operator, blender, or compounder of gasoline. However, the tax is not imposed on the bulk transfer of gasoline between two persons, such as between a refiner and a terminal operator, provided they are registered and bonded (as provided in § 48.4101–1). Registered gasohol blenders that remove gasoline and alcohol for blending as a gasohol from the same terminal are taxed at a reduced rate under section 4081(c)(1) and proposed § 48.4081–1(a)(3). Under section 4081(c)(2) and proposed § 48.4081–1(a)(4), tax is imposed on the removal or sale of gasoline by any person that separates gasoline from gasohol, with respect to which tax was imposed at the reduced rate under section 4081(c)(1) or a credit or payment was allowed under section 6427(f)(1). Section 4081 provides the rates of tax.

Although section 4081(c)(1) and proposed § 48.4081–1(a)(3) generally impose tax at a reduced rate for gasohol blending at a terminal, the Service has been asked to provide a procedure for registered gasohol blenders to purchase alcohol at a place other than the terminal where gasoline is purchased and have such alcohol treated as a purchase at the same terminal where the gasoline is purchased. Thus, the registered gasohol blender would qualify for the reduced rate of tax. Such a procedure would require, at a minimum, that (1) a registered gasohol blender purchase the gasoline and alcohol on the same day, and (2) both the purchaser and seller retain daily records that reflect the transactions. However, these proposed regulations do not include such a procedure for gasohol blenders. Therefore, unless and until such other procedure is prescribed, taxpayers must use the procedure set forth in proposed § 48.4081–1(a). The Service invites suggestions relating to alternative procedures to be used by registered gasohol blenders to qualify for the reduced rate of tax.

### Liability for Tax

Section 4081 provides that the tax on gasoline is generally imposed on the earlier of removal or sale of gasoline in nonbulk quantities by the refiner, importer, terminal operator, or by a blender and compounder. However,

section 4081 does not identify the taxpayer that is liable for payment of the tax. In order to clarify and implement section 4081, the proposed regulations provide that the person liable for the tax is the person that is a refiner or an importer that transfers gasoline in nonbulk quantities by removal or sale, or in bulk quantities to a nonregistered person. Where a refiner or importer transfers gasoline in bulk quantities to a registered person, the person liable for the tax is the person that: (1) Is registered under section 4101, and (2) is the owner of the gasoline at the time of a taxable removal or sale of the gasoline. A terminal operator is liable for the tax if it permits a nonregistered owner of gasoline to remove or sell gasoline from a terminal. An industrial user that receives gasoline blend stocks or additives tax-free is liable for the tax upon conversion of such products to taxable use. Where gasoline is blended or compounded, the taxpayer is the blender or compounder. See § 48.4081–1 (e) of the proposed regulations for definitions.

**Credits or Refunds**

Under proposed § 48.4081–1 (d), a credit or refund of tax is available to a taxpayer that: (1) Is a blender or compounder of gasoline that buys gasoline tax-paid and subsequently removes or sells the gasoline, thereby incurring liability for tax under section 4081(b) (1), (2) uses gasoline to produce gasohol (other than a taxpayer that blends at a terminal), (3) uses tax-paid gasoline blend stocks and additives to produce any nongasoline mixture, (4) purchases tax-paid gasoline for certain exempt purposes, or (5) uses gasoline for farming purposes, certain non-highway purposes, local transit systems, or certain other nontaxable purposes.

**Definitions**

Definitions are provided in § 48.4081–1(e) of the proposed regulations. For example, proposed § 48.4081–1(e)(13) generally defines "taxpayer" as including a refiner, importer, terminal operator, blender, compounder, and throughputter. In most cases the person that operates a terminal facility will be the taxpayer and wil be liable for payment of the tax under section 4081 because the terminal operator will also own the gasoline. Proposed § 48.4081–1(e)(16) defines a "throughputter" as any person that receives bulk transfers of gasoline from refiners, importers, terminal operators, or other throughputters; stores the gasoline in a terminal; and owns the gasoline or is the owner of record (*i.e.*, is the owner according to the records of the operator of the terminal facility) upon removal or sale from a terminal.

Proposed § 48.4081–1(e)(11) defines the terms "removed" or "removal" as any transfer of gasoline from a refinery, manufacturing plant, customs custody, terminal, pipeline, marine vessel, or any receptacle that stores gasoline. Use of gasoline also constitutes removal of gasoline. Proposed § 48.4081–1(e)(2) generally defines "bulk transfer" as any transfer of gasoline by pipeline, barge, or tanker, in quantities of no less than 10,000 barrels. A "qualified sale", defined in proposed § 48.4081–1(e)(9), is any transfer of title to or possession of gasoline between registered taxpayers, as long as the gasoline is not physically relocated.

Section 48.4081–1(e)(4) of the proposed regulations defines "gasoline" to include blend stocks and additives as well as all products commonly known as gasoline. "Gasoline blend stocks" is defined in proposed § 48.4081–1(e)(5) as any petroleum product component of gasoline that can be blended for use in a motor fuel. Proposed § 48.4081–1(e)(8) provides that the terms "products commonly used as additives in gasolne" and "additives" include all substances commonly or commercially known or sold as gasoline additives. An exception to the definitions of blend stocks and additives is provided for substances used for consumer nonfuel use.

**Recordkeeping Requirements**

Under § 48.4081–1(f)(2) of the proposed regulations, persons subject to sections 4081 and 4101 are required to maintain adequate records of all gasoline purchased, sold, removed, transferred, or used by such person.

**Floor Stocks Tax**

Section § 48.4081–1(g) of the proposed regulations explains the application of the floor stocks tax to gasoline held by a dealer on January 1, 1988. Dealers are required to make an inventory of the gasoline held on January 1, 1988, and keep records of that inventory. In determining the amount of gasoline subject to the floor stocks tax, gasoline below the mouth of the draw pipe may be excluded as provided in proposed § 48.4081–1(g)(3). In general, 200 gallons may be excluded for a tank with a capacity of less than 10,000 gallons, and 400 gallons may be excluded for a tank with a capacity of 10,000 or more gallons. Gasoline purchased tax-free and held by a dealer that is also a refiner, importer, terminal operator, throughputter, blender, or compounder is not subject to the floor stocks tax, unless the gasoline would have been subject to tax under section 1703 of the Act at any time before January 1, 1988 (but for the effective date). Proposed § 48.4081–1(g)(2) provides that the floor stocks tax is computed at the rate specified in section 1703 (f) of the Act. Although section 1703(f)(1) of the Act provides for a rate of nine cents per gallon for the floor stocks tax, it is anticipated that a technical correction will be made to the floor stocks tax rate. Under the proposed technical correction, the floor stocks tax on gasoline would be 9.1 cents per gallon, and the tax on gasoline described in section 4081(c)(1) (relating to gasoline mixed with alcohol) would be 3.1 cents per gallon. Section 48.4081–1(g) (5) of the proposed regulations provides that the floor stocks tax must be paid by February 16, 1988. A return of the tax must be filed on a Form 720.

**Registration and Bond**

Before incurring any liability for tax, every taxpayer must register and post bond under section 4101 and proposed § 48.4101–1. Under proposed § 48.4101–1(a)(2) all prior registrations (Certificates of Registry) applicable to the gasoline excise tax under section 4081 (*e.g.*, taxpayers qualifying under Form 637 "h" (relating to buyers of gasoline for further manufacture for nonfuel purposes), Form 637 "j" (relating to producers of gasoline), or Form 637 "n" (relating to producers of gasohol)), are revoked as of the close of business on December 31, 1987. All affected taxpayers are required to make a new application for a Certificate of Registry under section 4101 (as amended by section 1703 of the Act). Applicants are required to provide the information listed in proposed § 48.4101–1(b) before a Certificate of Registry will be issued. Changes in circumstances that cause the information supplied by an applicant to be incorrect require the submission of updated information.

The Service is considering adopting a procedure whereby a transferor of gasoline will be able to ascertain whether a transferee that is required to register under § 48.4101–1 is currently registered to purchase or store gasoline tax-free.

Industrial users of gasoline blend stocks or additives may register as terminal operators to purchase bulk quantities of such products tax-free under § 48.4101–1(a)(1) of the proposed regulations.

Proposed § 48.4101–1(c) provides that a bond must be executed on Form 928 in an amount generally equal to the tax liability expected to be incurred by the taxpayer during an average three-month period. However, if a taxpayer's tax

liability under section 4081 for any tax quarter is different from the amount of its outstanding bond by more than 20 percent, within two weeks of the applicable quarter, the taxpayer must give a strengthening or superseding bond that reflects the actual amount of tax.

**Credits or Payments for Certain Exempt Purposes**

Section 48.6421–3 of the regulations is proposed to amend the regulations under section 6421, relating to gasoline used for certain non-highway purposes or by local transit systems. The proposed regulations generally provide for credit or payment to purchasers of gasoline for any purpose described in section 4221(a) (2), (3), (4), or (5) (relating to certain tax-free sales) in an amount equal to the tax imposed under section 4081.

**Special Gasohol Credit; Credits or Refunds for Blend Stocks or Additives Not Used in Gasoline**

Sections 48.6427–3(f) and 48.6427–8 of the regulations are proposed to amend the regulations under section 6427, relating to fuels not used for taxable purposes. The proposed regulations under § 48.6427–3(f) provide an accelerated refund procedure for gasohol blenders that buy gasoline tax-paid. Under this provision, refunds not made within 20 days of filing a claim will be paid with interest. The proposed regulations under § 48.6427–8 provide a credit or refund for tax paid on gasoline blend stocks or additives not used as a fuel.

**Regulatory Flexibility Act**

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

**Executive Order 12291**

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

**Comments and Requests To Appear at the Public Hearing**

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held on January 5, 1988, in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention; Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

**Drafting Information**

The principal author of these proposed regulations is Timothy J. McKenna of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

**List of Subjects**

*26 CFR Part 48*

Agriculture, Arms and munitions, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

*26 CFR Part 301*

Procedure and Administration.

*Proposed Amendments to the Regulations*

The proposed amendments to 26 CFR Parts 48 and 301 are as follows:

**PART 48—[AMENDED]**

**Paragraph 1.** The authority for Part 48 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805. * * * Section 48.4081–1 also issued under 26 U.S.C. 4081(c)(1); section 48.4082–1 also issued under 26 U.S.C. 4082(a); and section 48.4101–2 also issued under 26 U.S.C. 4101(b).

**Part. 2.** Section 48.4081–1 is revised to read as set forth below:

**§ 48.4081–1 Imposition and rates of tax; gasoline.**

(a) *Imposition of tax*—(1) *In general.* Except as otherwise provided, section 4081 imposes a tax on the removal or sale (whichever is earlier) by a taxpayer required to register under § 48.4101–1 of gasoline that is owned by the refiner or importer thereof, or stored in a terminal or at the refinery. The tax is not imposed, however, on a removal or sale pursuant to a bulk transfer of gasoline between a registered taxpayer and another registered taxpayer, or on a qualified sale. If an industrial user receives a bulk transfer of gasoline blend stocks or additives tax-free, and subsequently converts the blend stocks or additives to taxable use (*e.g.*, for use in the manufacture of motor fuel), then the tax is imposed upon such conversion. See paragraph (e)(2) of this section for the definition of "bulk transfer". See paragraph (e)(9) of this section for the definition of "qualified sale". See section 4101 and § 48.4101–1 for registration and bond requirements. See section 4082(b) and paragraph (e)(11) of this section for certain uses of gasoline that are considered a removal of gasoline.

(2) *Blenders or compounders.* Section 4081(b)(1) imposes a tax on the removal or sale (whichever is earlier) of gasoline by a blender or compounder. The tax is not imposed, however, on a removal or sale pursuant to bulk transfer of gasoline between a registered taxpayer and another registered taxpayer, or on a qualified sale. The tax is imposed on the total volume of blended product. See section 4081(b)(2) and paragraph (d)(1) of this section for credit of tax previously paid by a blender or compounder.

(3) *Blending of gasohol at refinery, etc.* Section 4081(c)(1) imposes a tax on the removal or sale (whichever is earlier) of gasoline blended with alcohol to produce gasohol at the time of, or prior to, such removal or sale. The tax is not imposed, however, on a removal or sale pursuant to a bulk transfer of gasoline between a registered taxpayer and another registered taxpayer, or on a qualified sale. To qualify under section 4081(c)(1) and this paragraph (a)(3), a registered gasohol blender must purchase both the gasoline and the alcohol that are blended together to produce gasohol from the same terminal. Tax is imposed on the total volume of blended product.

(4) *Separation of gasoline from gasohol.* Section 4081(c)(2) imposes a tax on the removal or sale (whichever is earlier) of gasoline by any person that separates the gasoline from gasohol on which tax was imposed under paragraph (a)(3) of this section (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)).

(b) *Rate of tax.* Tax is imposed on the removal or sale of gasoline or gasohol at the rate that is applicable on the date on which the gasoline or gasohol is removed or sold (whichever is earlier). See section 4081 for the rates of tax.

(c) *Liability for tax.* The tax imposed by section 4081 is payable by a taxpayer that: Is registered or required to register under section 4101, and is the owner of gasoline at the time of a taxable removal or sale of the gasoline. If a nominal owner of gasoline is not its beneficial owner (*e.g.*, a customs broker may be a nominal owner of gasoline, engaged by the beneficial owner to import the gasoline), then both the beneficial and nominal owners will be considered the owner of the gasoline for purposes of the tax imposed by section 4081. However, the beneficial owner will be primarily liable for the tax imposed by section 4081. A taxpayer's liability for tax generally attaches at the time of a taxable removal or sale. A terminal operator is liable for the tax imposed by section 4081 if it permits a nonregistered owner of gasoline to remove or sell gasoline from a terminal. An industrial user is liable for the tax imposed by section 4081 upon conversion to taxable use of gasoline blend stocks or additives it received tax-free. See § 48.4081–1(e)(13) for the definition of taxpayer.

(d) *Credits or refunds of tax*—(1) *Blenders or compounders.* If tax on the removal or sale of gasoline by its blender or compounder is imposed pursuant to section 4081(b)(1) and paragraph (a)(2) of this section, a credit for tax paid, if any, on the sale or removal of such gasoline by reason by section 4081(a) and paragraph (a)(1) of this section (relating to the imposition of tax on refiners, importers, terminal operators, or throughputters) will be allowed against the tax imposed by reason of section 4081(b)(1) and paragraph (a)(2) of this section (relating to the imposition of tax on blenders and compounders). This credit will be allowed only if the blender or compounder establishes through proper documentation the amount of tax actually paid on the prior removal or sale. Generally, "proper documentation" means the submission of a statement to the district director, supported by sufficient evidence, showing:

(i) The amount claimed as a credit,

(ii) The type and quantity of gasoline on which the credit is based,

(iii) The name and address of the refiner, importer, terminal operator, or throughputter of gasoline that sold the gasoline to the blender or compounder,

(iv) The amount of tax paid in respect of the gasoline by the refiner, importer, terminal operator, or throughputter, and the date of payment, and

(v) The type and quantity of gasoline removed or sold by the blender or compounder.

(2) *Other.* Credits or refunds may also be available for—

(i) Gasoline used to produce gasohol (see section 6427(i)(3) and § 48.6427–3(f)),

(ii) Gasoline blend stocks and additives not used to produce gasoline (see section 6427(h) and § 48.6427–8),

(iii) Gasoline used on the farm for farming purposes (see section 6420 and the regulations thereunder),

(iv) Gasoline used for certain nonhighway purposes or by local transit systems (see section 6421 and the regulations thereunder),

(v) Gasoline sold for certain exempt purposes (see section 6421(c) and § 48.6421–3), and

(vi) Gasoline not used for taxable purposes (see section 6427).

(e) *Definitions.* For purposes of this section and § 48.4101–1, the following definitions apply—

(1) *Blender or compounder.* A blender or compounder is any person, other than a refiner, that mixes or blends gasoline with one or more other substances (including other gasoline, blend stocks, additives, or alcohol) to form a mixture to be sold or used as gasoline or gasohol. A blender or compounder may include an "industrial user".

(2) *Bulk transfer.* A bulk transfer is any transfer of gasoline from one location to another by pipeline tender or marine delivery (*i.e.*, transfer by barge or tanker) of no less than 10,000 barrels.

(3) *Gasohol.* Generally, gasohol is a blend of gasoline and alcohol in a mixture at least 10 percent of which contains alcohol made from any product other than petroleum, natural gas, or coal. See section 4081(c) and § 48.4081–2 (relating to gasoline mixed with alcohol) for requirements necessary to be considered gasohol.

(4) *Gasoline.* The term "gasoline" includes—

(i) All products commonly or commercially known or sold as gasoline that are suitable for use as a motor fuel (not including any product that is sold as a product other than gasoline and has an American Society for Testing Materials ("A.S.T.M.") octane number of less than 75 as determined by the "motor method"),

(ii) Gasoline blend stocks, and

(iii) Products commonly used as additives in gasoline.

(5) *Gasoline blend stocks.* The term "gasoline blend stocks" includes any petroleum product component of gasoline, such as naphtha, reformate, or toluene, that can be blended for use in a motor fuel. However, the term does not include any substance that—

(i) Will be ultimately used for consumer nonmotor fuel use and

(ii) Is sold or removed in drum quantities (55 gallons) or less at the time of the removal or sale.

(6) *Importer.* An importer is any person that brings gasoline into the United States from a source outside the United States, or that withdraws gasoline from a customs bonded warehouse for sale, removal, or use in the United States.

(7) *Industrial user.* An industrial user is any person that uses a substantial portion of the gasoline blend stocks or additives that it purchases—

(i) For its own consumption (other than as a motor fuel), or

(ii) In the manufacture of products other than motor fuel, such as petrochemical feedstocks or fertilizer.

An industrial user receiving a bulk transfer of gasoline blend stocks or additives from a registered refiner, importer, terminal operator, or throughputter must register as a terminal operator to purchase such gasoline blend stocks or additives tax-free (see § 48.4101–1). Sales or removals by an industrial user of gasoline blend stocks for nonmotor fuel use in drum quantities (55 gallons) or less, or additives for nonmotor fuel use in gallon quantities or less are not taxable sales or removals.

(8) *Products commonly used as additives in gasoline.* The terms "products commonly used as additives in gasoline" and "additives" mean any substance commonly or commercially known or sold as a gasoline additive. The terms include any substances sold for use or used in gasoline, such as isopropyl alcohol, antioxidant, or carburetor detergent. However, the terms do not include any substance that (i) will be ultimately used for consumer nonmotor fuel use (*e.g.*, detergent for household cleaner) and (ii) is sold or removed in gallon quantities or less at the time of the removal or sale.

(9) *Qualified sale.* A qualified sale is any transfer of title to or possession of gasoline between persons registered under section 4101, including exchanges or consignments of gasoline, when the gasoline is not transferred from one location to another (such as an exchange of title while the gasoline remains stored in a terminal).

(10) *Refiner.* A refiner is any owner or operator of a facility in which: Unfinished, semi-refined, or finished petroleum products are manufactured or recovered from crude oil, unfinished oils, natural gas liquids, other

hydrocarbons, oil and gas field gases, or alcohol (*i.e.*, a domestic refinery), or natural gas liquids are separated from natural gas, or in which natural gas liquids are fractioned or otherwise separated into natural gas liquid products, or both (*i.e.*, a domestic gas plant). A refiner includes any owner of petroleum products that contracts to have those products refined and subsequently sells the refined products to resellers or ultimate consumers. See the Department of Energy Petroleum Supply Annual (DOE/EIA-0340) for an annual listing of refiners.

(11) *Removal.* (i) The terms "removed" or "removal" include any physical transfer of gasoline from a refinery, manufacturing plant, customs custody, terminal, pipeline, marine vessel (*i.e.*, barge or tanker), or any receptacle that stores gasoline.

(ii) The use of gasoline by a refiner, importer, terminal operator, throughputter, blender, or compounder that refined, imported, stored, blended, or compounded the gasoline, other than in the production of gasoline or of special fuels referred to in section 4041 (*i.e.*, other than as component material in the manufacture or production of gasoline or special fuels), constitutes removal by such person. However, an indemnification in kind for gasoline lost in transit made by a pipeline common carrier that is a refiner, importer, terminal operator, throughputter, compounder, or blender is not a removal or use of gasoline for purposes of the tax imposed by section 4081, provided the gasoline lost is or will be taxed under section 4081. For circumstances under which gasoline may be used tax-free as a material in the manufacture of any other article, see section 4218(a) and § 48.4218-1(b)(4).

(12) *Sale.* A sale is any transfer of title to gasoline or the substantial incidents of ownership in gasoline for consideration (including money, services, and other gasoline).

(13) *Taxpayer.* (i) The term "taxpayer" includes any refiner, importer, terminal operator, blender, compounder, or throughputter of gasoline.

(ii) Taxpayers are required to register, post bond, and provide certain information under section 4101, § 48.4101-1, and paragraph (f)(2) of this section.

(14) *Terminal.* A terminal is a storage and distribution facility for gasoline, supplied by pipeline or marine vessel, that has the capacity to hold a bulk transfer of gasoline.

(15) *Terminal operator.* A terminal operator is any person that owns, operates, or otherwise controls a terminal, and does not use a substantial portion of the gasoline that is transferred through or stored in the terminal for its own use (*i.e.*, for its own consumption or in the manufacture of products other than motor fuel). A terminal operator may own the gasoline that is transferred through or stored in the terminal. Notwithstanding the second clause of the first sentence of this paragraph, an industrial user may register as a terminal operator to purchase gasoline blend stocks or additives in bulk quantities tax-free. See §§ 48.4081-1(a)(1) and 48.4101-1(a)(1).

(16) *Throughputter.* A throughputter is any person that: (i) Receives transfers of gasoline from refiners, importers, terminal operators, or other throughputters, (ii) stores the gasoline in a terminal, and (iii) owns the gasoline or holds the inventory position to the gasoline (as reflected on the records of the terminal operator) at the time of removal or sale from a terminal.

(f) *Reporting*—(1) *Filing requirements.* Liability for tax imposed under section 4081 must be reported on Form 720 (Quarterly Federal Excise Tax Return), in accordance with the instructions for Form 720 and the applicable regulations.

(2) *Recordkeeping requirements.* (i) Every persons that is registered or required to register under section 4101 and § 48.4101-1 must maintain adequate records of all gasoline it purchases, sells, or removes. For each purchase, sale, or removal of gasoline (including blend stocks and additives), the record must include: The volume of gasoline, the type(s) of gasoline, the date of the transaction, the name and status of each person involved (*e.g.*, X Corporation as seller and A Proprietor as purchaser, or Y Company as transferor and Z Company as transferee), and whether the sale or removal is taxable. Terminal operators are also required to maintain in their records the quantities, types, dates, purchases, removals, sales, and names applicable to inventory positions of gasoline held in their terminals.

(ii) Any taxpayer that claims a credit or refund of tax imposed under section 4081 must maintain adequate records to support the credit or refund.

(iii) All records required by this paragraph (f)(2) shall be kept at the principal place of business of the person required to maintain the records. The records shall at all times be available for inspection by internal revenue agents and officers. Records required by this section shall be maintained for a period of at least three years after either (A) the date the tax becomes due or is paid (whichever is later), or (B) the last date prescribed for the filing of the claim for credit or payment, as applicable.

(g) *Floor stocks tax*—(1) *Scope of floor stocks tax on gasoline.* A floor stocks tax under section 1703 of the Tax Reform Act of 1986 is imposed on gasoline that, at the first moment of January 1, 1988, is held by a dealer for sale, and with respect to which no tax has been imposed under section 4081 of the Internal Revenue Code of 1954.

(2) *Application of the floor stocks tax on gasoline.* In general, the floor stocks tax on gasoline is computed at the rate specified in section 1703(f) of the Tax Reform Act of 1986.

(3) *Definitions.* For purposes of this paragraph (g)—(i) *Gasoline.* The term "gasoline" generally has the meaning prescribed in section 4082(a) and paragraph (e)(4) of this section. However, in determining the amount of gasoline held on January 1, 1988, the dealer may exclude the amount of gasoline in dead storage.

(ii) *Dead storage.* "Dead storage" is the amount of gasoline that will not be pumped out of a storage tank because the gasoline is below the mouth of the draw pipe. For this purpose, a dealer may assume that the amount of gasoline in dead storage is 200 gallons for a tank with a capacity of less than 10,000 gallons and 400 gallons for a tank with a capacity of 10,000 gallons or more. In the alternative, a dealer may compute the amount of gasoline in dead storage by using the manufacturer's conversion table for the tank and the number of inches between the bottom of the tank and the mouth of the draw pipe. If the dealer uses the conversion table method to compute the amount of gasoline in dead storage, the distance between the bottom of the tank and the mouth of the draw pipe will be assumed to be 6 inches, unless the dealer establishes otherwise.

(iii) *Dealer.* The term "dealer" means a wholesaler, jobber, distributor, or retailer. The tax imposed by section 1703(f) of the Tax Reform Act of 1986 and this paragraph (g) applies to gasoline held by a dealer who is also the refiner, importer, terminal operator, throughputter, blender, or compounder of the gasoline to the extent the gasoline so held was not taxed under section 4081 of the Internal Revenue Code of 1954, but would have been subject to tax pursuant to section 4081 of the Internal Revenue Code of 1986 and paragraph (a) of this section at any time before January 1, 1988 (but for the effective date). However, the floor stocks tax on gasoline does not apply to gasoline held by any person for that person's own use rather than for sale.

(iv) *Held by a dealer.* Gasoline is regarded as held by a dealer if title to

the gasoline has passed to the dealer (whether or not delivery to the dealer has been made), and if, for purposes of consumption, title to the gasoline or possession or right to possession thereof has not at any time been transferred prior to January 1, 1988, to any person other than a dealer. The determination as to the time title passes or possession is obtained for purposes of consumption shall be made under applicable local law.

(4) *Inventory.* Every dealer liable for the floor stocks tax on gasoline shall prepare an inventory of gasoline held for sale at the first moment of January 1, 1988. Dealers holding gasoline subject to the tax at more than one location shall prepare a separate inventory, in duplicate, for each such location. One copy of the separate inventory shall be retained at the location and one copy shall be kept at the principal place of business of the dealer. Each inventory shall show the name of the dealer, the location of the particular premises for which the inventory is made, the address shown on the dealer's tax return, and the total number of gallons of gasoline held at the particular location that are subject to the floor stocks tax on gasoline. The inventory shall not be filed with the return but shall be retained by the taxpayer.

(5) *Requirements with respect to return*—(i) *Form.* Every person liable for the floor stocks tax on gasoline shall make a return of the tax on Form 720.

(ii) *Time and place for filing return.* The return shall be filed with the Service Center indicated by the instructions for the Form 720. In the case of a dealer not otherwise required to file Form 720, the return must be filed before February 16, 1988, and must be marked "FINAL". If liability is subsequently incurred by such dealer during the quarter ending March 31, 1988, so that a second Form 720 is required to be filed for that quarter, the dealer must mark the second Form 720 "AMENDED". In the case of all other dealers, the return reflecting the floor stocks tax must be filed on or before the date prescribed by the instructions for the Form 720 for the quarter ending March 31, 1988. For provisions relating to timely filing and paying, see sections 7502 and 7503. For provisions relating to additions to the tax in case of failure to file a return within the prescribed time, see section 6651 and § 301.6651.

(iii) *Time and place for paying tax.* The tax is due and payable without assessment or notice, before February 16, 1988. If a dealer is not required to make a deposit of any tax under chapter 31 or chapter 32 of the Code using a Federal Tax Deposit Coupon for the quarter ending March 31, 1988, the dealer shall pay the tax by check or money order. Such check or money order must reflect the dealer's taxpayer identification number, and either "Form 720 First Quarter 1988, Floor Stocks Tax on Gasoline, IRS No. 65" for gasoline in general, or "Form 720 First Quarter 1988, Floor Stocks Tax on Gasoline, IRS No. 67" for gasoline described in section 4081(c)(1) (relating to gasoline mixed with alcohol). The check or money order must be sent, together with the Form 720, to the Service Center indicated by the instructions for the Form 720. All other dealers shall pay the tax by making a deposit of the tax, together with a Federal Tax Deposit Coupon before February 16, 1988, at an authorized depositary or the Federal Reserve Bank serving the dealer's area. For provisions relating to interest on underpayments, additions to tax, and penalties, see the applicable sections of part 301 of this chapter (Regulations on Procedure and Administration).

(6) *Credit or refund.* Any person who has paid a floor stocks tax on gasoline may be entitled, subject to the provisions of section 6416 and § 301.6402-2, to a credit or refund of the tax for any of the reasons specified in section 6416. Thus, credit or refund may be claimed for any of the purposes specified in section 6416(b)(2)(A)-(D) and (F), relating to—

(i) Exportation,

(ii) Supplies for vessels or aircraft,

(iii) Exclusive use of a state or local government,

(iv) Exclusive use of a nonprofit educational organization, or

(v) Use of gasoline in the production of special fuels.

Claims for refund under this section are to be filed on Form 843. Any person entitled to claim a refund of tax under this section may, in lieu of claiming a refund, claim a credit for the tax on any return of tax under chapter 32 that the person subsequently files.

(7) *Records.* Every person liable for the floor stocks tax on gasoline must maintain—

(i) Records of the separate inventories required by paragraph (g)(4) of this section,

(ii) A duplicate copy of the return, together with other relevant papers and material, and

(iii) A complete and detailed record with respect to any claim of refund or credit of the tax.

All records required by this paragraph (g)(7) shall be kept at the principal place of business of the person required to maintain the records. The records shall at all times be available for inspection by internal revenue agents and officers. Records required by paragraphs (g)(7)(i) and (ii) of this section shall be maintained for a period of at least three years after the date the tax becomes due or the date the tax is paid, whichever is later. Records required by paragraph (g)(7)(iii) of this section (including any record required by paragraph (g)(7)(i) or (ii) of this section that relates to a claim) shall be maintained for a period of at least three years after the last day prescribed for the filing of the claim for credit or payment.

(h) *Effective date.* The tax imposed by section 4081 is effective with respect to any removal or sale of gasoline (as those terms are defined in section 4082 and paragraph (e) of this section) after December 31, 1987.

**Par. 3.** Section 48.4101-1 is revised to read as set forth below:

**§ 48.4101-1 Registration and bond.**

(a) *Requirement*—(1) *In general.* Every taxpayer shall, before incurring any liability for tax with respect to gasoline under section 4081, make application for registry and give a bond in accordance with the provisions of paragraphs (b) and (c) of this section. Upon approval of the application and acceptance of the bond, the applicant will be furnished a Certificate of Registry bearing the applicant's registration number. The certificate may not be transferred from one person to another. If there are changes in circumstances that cause information contained in the application for registry to be incorrect, the applicant must submit an updated statement containing the new information. See paragraph (b)(3) of this section. A new application for registry must be made, and the bond requirements met, if there is a substantial change in the ownership or management of a person that holds a Certificate of Registry. If the amount of the bond would be different after recalculation for any quarter, then the taxpayer may have to give a strengthening or superseding bond. See paragraph (c)(2)(iii) of this section. See section 7272 for the imposition of a civil penalty for failure to register. Failure to meet the requirements of this section may result in revocation of a taxpayer's registration. See section 7232 for provisions relating to the imposition of criminal penalties for: Failure to register and give bond as required by section 4101, false representation as a person so registered and bonded, or willfully making any false statement in an application for registry under section 4101. An industrial user of gasoline blend stocks or additives may purchase bulk quantities of such products tax-

free, provided the industrial user applies for registry as a terminal operator in accordance with the provisions of paragraph (b) of this section and gives a bond in accordance with the provisions of paragraph (c) of this section. See sections 4081 and 4082 and the regulations thereunder for definitions of taxpayer and industrial user.

(2) *Revocation of prior registration.* (i) All Certificates of Registry (Form 637) issued prior to January 1, 1988 (pursuant to section 4101, prior to its amendment by the Tax Reform Act of 1986), are revoked as of the close of business on December 31, 1987. All taxpayers (as defined in § 48.4081-1(e)(12)) subject to the registration requirements of this section must hold a Certificate of Registry (Form 637) that is effective after December 31, 1987, and that is applicable to sections 4081 and 4101, as amended by the Tax Reform Act of 1986. Taxpayers under prior law, such as producers or importers of gasoline, that made application for registry under corresponding provisions of prior regulations, or hold a Certificate of Registry in effect under prior regulations, are required to reapply for registry under this section. Reapplication for registry must be made in writing at the time, in the form, and in such manner as prescribed in this section.

(ii) A Certificate of Registry (Form 637) may be revoked at any time by the district director in a case where the district director deems it necessary in order to ensure the collection of the tax imposed by section 4081.

(b) *Application for registry*—(1) *In general.* Application for registry required under paragraph (a) of this section must be prepared on Form 637 in accordance with the instructions and applicable regulations. The application must include a statement as to whether the applicant is a refiner, importer, terminal operator, blender, compounder, throughputter, or industrial user of gasoline. In addition, the application must include a statement setting forth in detail—

(i) A description of the equipment and facilities, if any, maintained for the production of gasoline,

(ii) A description of the equipment and methods actually employed in the production of gasoline,

(iii) The ingredients or materials utilized,

(iv) The percentage that the sales (if any) of gasoline or gasohol produced by the applicant, is expected to bear to total sales of gasoline of gasohol by the applicant,

(v) A description of any storage facilities used,

(vi) A description of any equipment or facilities used for the transfer of gasoline,

(vii) The percentage that the bulk sales or transfers of gasoline (including blend stocks and additives), if any, is expected to bear to total sales or transfers of gasoline,

(viii) The names and addresses of all persons (if any) that will be used by the applicant as agents or brokers in the selling of gasoline,

(ix) The name and address of any person for whom gasoline will be purchased or imported by the applicant (*i.e.*, the beneficial owner),

(x) If the applicant is an industrial user of gasoline, the amount of gasoline blend stocks or additives expected to be used in the manufacture of products other than motor fuel, and the percentage of the gasoline blend stocks or additives the applicant expects to receive by bulk transfer, and

(xi) Evidence of financial responsibility.

(2) *Financial responsibility.* Financial responsibility will be determined by the Commissioner based on all the facts and circumstances. For example, the applicant may be required to provide:

(i) Financial statements (generally, an income statement, balance sheet, and other appropriate information) that reflect financial solvency; and

(ii) Evidence of general compliance with the provisions of the Internal Revenue Code (*i.e.*, no additions to tax or penalties assessed under 26 U.S.C. chapter 68).

(3) *Updated registration information.* If changes in circumstances cause information contained in an application for registry to be incorrect, the applicant is required to submit an updated statement to the appropriate district director. The updated statement must be submitted for each taxable year (including any short taxable year) in which there is a change in any of the information submitted to the district director for registration under this paragraph. The updated statement must contain the current information pertaining to the requirements of this paragraph, along with the applicant's name and taxpayer identification number. The updated statement is due by the last day of the second month following the applicable taxable year.

(4) *Form of application.* The application for registry must be signed by the individual if the applicant is an individual; the president, vice president, or other principal officer, if the applicant is a corporation; a responsible and duly authorized member or officer having knowledge of its affairs, if the applicant is a partnership or other unincorporated organization; or the fiduciary, if the applicant is a trust or estate. The application must be filed with the district director for the district in which the applicant has its principal office or place of business. If the principal office or place of business of a taxpayer is relocated in a different district, such taxpayer must immediately provide written notification of the relocation to the district director for the district where the taxpayer is registered. A copy of the notification must also be sent by the taxpayer to the district director for the district where the principal office or place of business is relocated. Failure to provide such notification to the respective district directors may result in revocation of a taxpayer's Certificate of Registry. Copies of Form 637 may be obtained from any district director.

(c) *Bond*—(1) *In general.* The bond required under paragraph (a) of this section must be executed on Form 928 in accordance with the instructions and applicable regulations. Copies of Form 928 may be obtained from any district director. See paragraphs (a) and (b) of this section for requirements necessary to complete application for registry. The bond will be conditioned on the following factors:

(i) The principal may not engage in any attempt, alone or in collusion with others, to defraud the United States of any tax under section 4081,

(ii) The principal will render truly and completely all returns, statements, records, and inventories required by law or regulations in respect of the tax under section 4081 and will pay any liability for tax, and

(iii) The principal will comply with all requirements of law and regulations with respect to the tax under section 4081.

(2) *Amount of bond.* Generally, the amount of the bond will be equal to the amount of tax under section 4081 for which the principal will be expected to incur liability during an average 3-month period (as determined by the district director), computed at the rate of tax in effect at the time the bond is given. In the case of a terminal operator, the amount of the bond will be equal to the amount of tax that would be imposed under section 4081 on the expected volume of gasoline that will flow through the terminal operator's equipment or facility (as if the terminal operator were the owner of all such gasoline) during an average 3-month period (as determined by the district director), computed at the rate of tax in effect at the time the bond is given. In all cases—

(i) Where the approximate amount of tax so calculated is not an even multiple of $100, the amount of the bond will be increased to the next higher multiple of $100. For example, if the approximate amount of tax liability to be incurred during the 3-month period is calculated at $3,333.33, the amount of the bond is $3,400.

(ii) The amount of the bond shall not be less than $2,000.

(iii) If, after the original bond is given, the amount of a taxpayer's actual tax liability (exclusive of credits) for any quarter under section 4081 differs from the amount of the taxpayer's outstanding bond by more than 20 percent, then the taxpayer must give a strengthening or superseding bond in accordance with the requirements of this paragraph (c) that reflects the actual tax liability. This strengthening or superseding bond must be given within two weeks after the end of the applicable quarter. A terminal operator is similarly required to give a strengthening or superseding bond based on the actual volume of gasoline flowing through its terminal during a quarter.

The bond required under paragraph (a) of this section must be submitted to the district director with the application for registry required under paragraph (a) of this section. Such bond must be signed on behalf of the principal by any person designated under paragraph (b) of this section as a proper person to sign the application for registry. Failure to maintain a bond in an adequate and current amount as required by this section may result in revocation of a taxpayer's registration.

(3) *Cancellation clause.* The bond required under paragraph (a) of this section may be accepted with a cancellation clause incorporated therein. The cancellation clause must provide that—

(i) Any surety on the bond may at any time give notice in writing to the principal and the district director that such surety desires to be relieved of liability under the bond after a certain date, which date must be at least 60 days after the receipt of notice by the district director.

(ii) The rights of the principal as supported by the bond will be terminated on the date named in the notice (unless supported by another bond or bonds), and the surety will be relieved from liability under the bond for any acts done wholly subsequent to the date named in the notice, if the notice is not withdrawn in writing prior to the date named in the notice. However, the surety will remain liable for any unpaid tax liability, including penalties and interest, incurred by the principal before cancellation, unless the principal pays the tax and penalties and interest.

(iii) The notice may not be given by an agent of the surety, unless it is accompanied by power of attorney duly executed by the surety authorizing the agent to give the notice or by a verified statement that the power of attorney is on file with the district director.

(4) *Changes in bond.* After filing of the bond required under paragraph (a) of this section, no change may be made in the terms thereof except with the consent of the surety or sureties and subject to the approval of the district director. Any change, along with the surety's or sureties' consent thereto, must be shown on Form 928. In any case where a change is proposed in the terms of the bond, Form 928 must be executed and filed in the same manner as that prescribed with respect to the bond itself and must be accompanied by information showing the registration number of the principal.

(5) *Strengthening or superseding bond.* A strengthening or superseding bond may be required under paragraphs (a) and (c) of this section, even if a new application for registry is not required. The district director may require a strengthening or superseding bond under this section at any time where the district director deems it necessary in order to ensure the collection of the tax imposed by section 4081.

(6) *Other provisions relating to bonds.* For general provisions relating to bonds, see section 7101 and the regulations thereunder.

(d) *Effective date.* The regulations in this section are effective with respect to gasoline removed or sold after December 31, 1987.

**§ 48.4221-5 [Amended]**

**Par. 4.** Paragraph (d) of § 48.4221-5 is amended by removing from the first sentence the words "(such as gasoline that is" and adding in their place the words "(such as tires that are".

**§ 48.4221-1 [Amended]**

**Par. 5.** Paragraph (b)(2) of § 48.4221-1 is amended by removing paragraphs (b)(2) (ix) and (x) and redesignating paragraphs (b)(2) (xi) and (xii) as paragraphs (b)(2)(ix) and (x) respectively.

**§ 48.4221-2 [Amended]**

**Par. 6.** Paragraph (b)(1) of § 48.4221-2 is amended by removing paragraph (b)(1) (iii) and replacing the ";" at the end of paragraph (b)(1)(ii) with ".".

**§ 48.4222(d)-1 [Amended]**

**Par. 7.** Paragraph (e) and (f) of § 48.4222(d)-1 are removed and paragraph (g) is redesignated as paragraph (e).

**§§ 48.6421-3, 48.6421-4, 48.6421-5, 48.6421-6 and 48.6421-7 [Redesignated as §§ 48.6421-4, 48.6421-5, 48.6421-6, 48.6421-7 and 48.6421-8 respectively]**

**Par. 8.** Sections 48.6421-3, 48.6421-4, 48.6421-5, 48.6421-6, and 48.6421-7 are redesignated as §§ 48.6421-4, 48.6421-5, 48.6421-6, 48.6421-7, and 48.6421-8, respectively.

**§ 48.6421-0 [Amended]**

**Par. 9.** Section 48.6421-0 is amended by removing "§ 48.6421-4(b)" and adding in its place "§ 48.6421-5(b)".

**§ 48.6421-1 [Amended]**

**Par. 10.** Section 48.6421-1 is amended as follows:

1. Paragraph (a)(1) is amended by adding after the fourth sentence the language "However, the credit or payment under this section does not include any amount attributable to the Leaking Underground Storage Tank Trust Fund financing rate."

2. Paragraph (a)(1) is also amended by removing from the next-to-last sentence "§ 48.6421-3" and adding in its place "§ 48.6421-4", and by removing from the last sentence "§ 48.6421-4" and adding in its place "§ 48.6421-5".

3. The first sentence of paragraph (b) is amended by adding after "section 4081" and "amount of this tax", the language "(excluding the amount attributable to the Leaking Underground Storage Tank Trust Fund financing rate)".

4. Paragraph (b) is also amended by removing from the second sentence "6421(i)" and adding in its place "6421(j)".

5. Paragraph (c)(3) is amended by removing "6421(c)(2)" and adding in its place "6421(d)(2)".

6. Paragraph (f)(2) is amended by adding at the end thereof the language "(For the rate of payment allowable, see paragraph (a)(1) of this section.)".

**§ 48.6421-2 [Amended]**

**Par. 11.** Section 48.6421-2 is amended as follows:

1. Paragraph (a) is amended by adding after the second sentence the language "However, the credit or payment under this section does not include any amount attributable to the Leaking Underground Storage Tank Trust Fund financing rate."

2. Paragraph (a) is also amended by removing from the third-to-last sentence "§ 48.6421-3" and adding in its place

"§ 48.6421–4", and by removing from the next-to-last sentence "§ 48.6421–4" and adding in its place "§ 48.6421–5".

3. The first sentence of paragraph (b) is amended by adding after "section 4081" and "amount of this tax", the language "(excluding the amount attributable to the Leaking Underground Storage Tank Trust Fund financing rate)".

4. Paragraph (b) is also amended by removing from the second sentence "6421(i)" and adding in its place "6421(j)".

5. Paragraph (c)(3) is amended by removing "6421(c)(2)" and adding in its place "6421(d)(2)".

6. Paragraph (d)(1) is amended by adding at the end thereof the language "(excluding the amount attributable to the Leaking Underground Storage Tank Trusk Fund financing rate)".

7. Paragraph (d)(2) is amended by adding after "section 4081" the language "(excluding the amount attributable to the Leaking Underground Storage Tank Trust Fund financing rate)".

**Par. 12.** A new § 48.6421–3 is added to read as follows:

**§ 48.6421–3 Credits or payments to ultimate purchasers of gasoline used for certain exempt purposes.**

(a) *In general.* (1) If gasoline is sold to any person for any purpose described in section 4221(a)(2) (relating to exportation), (a)(3) (relating to vessel or aircraft supplies), (a)(4) (relating to State or local government use), or (a)(5) (relating to nonprofit educational use), a credit or a payment with respect to the gasoline shall be allowed or made to the ultimate purchaser of the gasoline. See paragraph (b) of this section for the circumstances under which the credit will be allowed. See paragraph (c) of this section for the circumstances under which the payment will be made. The credit or payment under this section shall be an amount equal to the product of the number of gallons of gasoline purchased multiplied by the rate at which tax was imposed on the gasoline by section 4081. However, the credit or payment allowed or made under this section does not include any amount attributable to the Leaking Underground Storage Tank Trust Fund financing rate. See section 34(a) relating to credit for certain uses of gasoline and special fuels. See § 48.6421–4 for the time within which a claim for credit or payment must be made under this section. See section 4082(a) and § 48.4081–1(e)(4) for the meaning of "gasoline". See section 4221(a) and the regulations thereunder for other related definitions.

(2) No interest shall be paid on any payment allowed under paragrpah (c) of this section. However, interest may be paid on an overpayment (as defined by section 6401) arising from a credit allowed under paragraph (b) of this section.

(b) *Allowance of income tax credit.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4081 (excluding the amount attributable to the Leaking Underground Storage Tank Trust Fund financing rate) for gasoline purchased for any purpose described in section 4221(a)(2), (3), (4), or (5) by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax (excluding the amount attributable to the Leaking Underground Storage Tank Trust Fund financing rate) against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6421 with respect to gasoline purchased during the taxable year for any purpose described in section 4221(a)(2), (3), (4), or (5), if section 6421(j) and paragraph (c) of this section did not apply. See section 34(a)(2).

(c) *Allowance of payment.* Payments in respect of gasoline upon which tax was paid under section 4081 that is sold to any person for any purpose described in section 4221(a)(2), (3), (4), or (5) shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, a political subdivision of a State, an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia.

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) A person described in section 6421(d)(2) to whom $1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to gasoline purchased during any of the first three quarters of the person's taxable year.

(d) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of gasoline purchased during the period covered by the claim for any purpose described in section 4221(a)(2), (3), (4), or (5), multiplied by the rate at which tax was imposed on the gasoline by section 4081 (excluding the amount attributable to the Leaking Underground Storage Tank Trust Fund financing rate).

(2) The purpose or purposes for which the gasoline was purchased and the amount purchased for each purpose, and

(3) If a claim on Form 843 is being filed, the internal revenue district or service center with which the claimant last filed an income tax return (if any).

**Par. 13.** Newly redesignated § 48.6421–4 is amended as follows:

1. Paragraphs (a) and (b)(1)(ii) are revised to read as set forth below.

2. Paragraph (b)(2) is amended by removing the first sentence and adding in its place a new sentence to read as set forth below.

3. Paragraph (c) is amended by removing "§ 48.6421–1 or § 48.6421–2" and adding in its place "§ 48.6421–1, § 48.6421–2, or § 48.6421–3", and by removing the word "used".

4. Paragraph (d)(2) is amended by removing from the last sentence "§ 48.6421–1(c) or § 48.6421–2(c)," and adding in its place "§ 48.6421–1(c), § 48.6421–2(c), or § 48.6421–3(c),".

5. Paragraph (d)(3)(i) is amended by removing the word "used" each place it appears in the first sentence, and adding in its place the words "used or purchased".

6. Paragraph (e) is revised to read as set forth below.

**§ 48.6421–4 Time for filing claim for credit or payment.**

(a) *In general.* A claim for credit or payment described in § 48.6421–1 with respect to gasoline used in a qualified business use or as a fuel in an aircraft (other than aircraft in noncommercial aviation), § 48.6421–2 with respect to gasoline used either in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations, or § 48.6421–3 with respect to gasoline sold for any purpose described in section 4221(a) (2), (3), (4), or (5), shall cover only gasoline used or sold during the taxable year. Similarly, when paragraph (b)(2) of this section applies, a claim for credit or payment described in §§ 48.6421–1, 48.6421–2, or 48.6421–3 shall cover only gasoline used or sold during the calendar quarter. For example, under §§ 48.6421–1 and 48.6421–2, gasoline or hand at the end of a taxable year, or, if applicable, a calendar quarter, such as gasoline in fuel supply tanks of vehicles or in storage tanks or drums, must be excluded from a claim filed for the taxable year or calendar quarter, as the case may be. However, this gasoline may be included in a claim filed for a later taxable year or a later calendar quarter under § 48.6421–1 or § 48.6421–2

if it is used during that later year or quarter in a qualified business use, as fuel in an aircraft (other than aircraft in noncommercial aviation), or in an intercity, local, school bus. Gasoline used or sold during the taxable year or calendar quarter may be included in the claim for that period although the gasoline was not paid for at the time the claim is filed. For purposes of applying this section, a governmental unit or exempt organization described in § 48.6421–1(c), § 48.6421–2(c), or § 48.6421–3(c) is considered to have as its taxable year the calendar year or fiscal year on the basis of which it regularly keeps its books (see § 48.6421–5(g)).

(b) *Time for filing*—(1) * * *

(ii) A claim for payment of a governmental unit or exempt organization described in § 48.6421–1(c), § 48.6421–2(c), or § 48.6421–3(c) must be filed no later than three years following the close of its taxable year (see § 48.6421–5).

(2) *Quarterly claims.* A claim for payment of $1,000 or more in respect of gasoline used or purchased during any of the first three quarters of the taxable year, filed under § 48.6421–1(c)(3) in respect of gasoline used in a qualified business use or as a fuel in an aircraft (other than aircraft used in noncommercial aviation), under § 48.6421–2(c)(3) in respect of gasoline used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus operations, or under § 48.6421–3(c)(3) in respect of gasoline sold for any purpose described in section 4221(a) (2), (3), (4), or (5), shall not be allowed unless the claim is filed on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed. * * *

* * * * *

(e) *Restrictions on claims for credit or payment.* Credits or payments are allowable only in respect of gasoline that was sold by the refiner or importer thereof or the terminal operator, throughputter, blender, or compounder, in a transaction that was subject to tax under section 4081. See §§ 48.6416(a)–3 and 48.6416(b)(2)–3 (b)(1) for conditions relating to allowance for credit or refund of tax.

**§ 48.6421–5 [Amended]**

**Par. 14.** Newly redesignated § 48.6421–5 is amended as follows:

1. Paragraph (a) is amended by removing "4082 (b)" and adding in its place "4082 (a)".

2. Paragraph (g) is amended by removing from the first sentence § 48.6421–1(c) or § 48.6421–2(c)" and adding in its place "§ 48.6421–1(c), § 48.6421–2(c), § 48.6421–3(c)".

**§ 48.6421–6 [Amended]**

**Par. 15.** Newly redesignated § 48.6421–6 is amended as follows:

1. Paragraph (a) is removed, and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively.

2. Redesignated paragraph (a) is amended by removing "§ 48.6421–1 or § 48.6421–2" and adding in its place "§ 48.6421–1, § 48.6421–2, or § 48.6421–3".

3. Redesignated paragraph (a) is further amended by removing the reference to "this paragraph (b)" and adding in its place "this paragraph (a)".

**Par. 16.** Newly redesignated § 48.6421–8 is amended as follows:

1. Paragraph (a)(3) is amended by adding at the end thereof the language "or purchased by the claimant during the period covered by the claim for any purpose described in section 4221(a) (2), (3), (4), or (5),".

2. The second sentence of paragraph (b)(2) is revised to read as set forth below.

**§ 48.6421–8 Records to be kept in substantiation of credits or payments.**

* * * * *

(b) *Acceptable records.* (1) * * *

(2) * * * However, the records must show separately the number of gallons of gasoline used for nonhighway purposes, or used in intercity, local, or school buses, or purchased for any purpose described in section 4221(a) (2), (3), (4), or (5), during the period covered by the claim.

* * * * *

**§ 48.6427–1 [Amended]**

**Par. 17.** Section 48.6427–1 is amended as follows:

1. Paragraph (a)(3)(iii) is amended by removing from the second sentence "4082(b)" and adding in its place "4082(a)".

2. Paragraph (a)(3)(iii) is also amended by removing from the last sentence "§ 48.6421–4" and adding in its place "§ 48.6421–5".

3. Paragraph (b) is amended by removing from the second sentence "6427(i)" and adding in its place "6427(k)".

**§ 48.6427–2 [Amended]**

**Par. 18.** Section 48.6427–2 is amended as follows:

1. Paragraph (a)(2) is amended by removing "§ 48.6421–4" and adding in its place "§ 48.6421–5".

2. Paragraph (b) is amended by removing from the next-to-last sentence "6427(i)" and adding in its place "6427(k)".

**Par. 19.** Section 48.6427–3 is amended as follows:

1. Paragraph (a) is amended by removing from the last sentence "§ 48.6421–4" and adding in its place "§ 48.6421–5".

2. Paragraph (b)(1)(ii) is amended by removing "§ 48.6421–4" and adding in its place "§ 48.6421–5".

3. A new paragraph (f) is added to read as follows:

**§ 48.6427–3 [Amended]**

* * * * *

(f) *Special rule for filing gasohol refund*—(1) *In general.* A claim for refund of tax paid under section 4081(a) (excluding the amount attributable to the Leaking Underground Storage Tank Trrust Fund financing rate) may be filed under section 6427(f) (relating to gasoline used to produce certain alcohol fuels) by any blender of gasohol that purchases gasoline tax-paid for any period:

(i) For which $200 or more is payable under section 6427(f), and

(ii) That is not less than seven calendar days.

(2) *Manner of filing claim.* The claim for refund to which this section applies must be made on Form 843 in accordance with the instructions prescribed for the preparation of the form. The taxpayer must attach to the Form 843 a statement that includes the following information regarding each purchase of gasoline and alcohol to which the claim relates:

(i) The supplier(s) of the gasoline and alcohol,

(ii) The date(s) of the purchases,

(iii) The total number of gallons of gasoline and alcohol purchased, and

(iv) The total number of gallons of gasohol blended by the taxpayer.

(3) *Payment of claim.* If a claim filed under this section has not been paid within 20 days of the date of filing of the claim, then the claim shall be paid with interest (notwithstanding section 6427(f)(1)) from the date of the filing of the claim. See section 6621 for the overpayment rate and method used to calculate interest for purposes of this paragraph (f)(2).

**§ 48.6427–7 [Amended]**

**Par. 20.** Paragraph (g)(1) of § 48.6427–7 is amended by removing "6427(j)" and adding in its place "6427(k)".

**Par. 21.** A new § 48.6427–8 is added to read as follows:

**§ 48.6427-8 Credit or refund for gasoline blend stocks or additives not used for producing gasoline.**

A credit or refund of the gasoline excise tax imposed on gasoline blend stocks or additives under section 4081 may be claimed under section 6427(h) by the person that purchases gasoline blend stocks or additives tax-paid, and does not use the blend stocks or additives as gasoline or in the production of gasoline, or sells the blend stocks in drum quantities (55 gallons) or less, or additives in gallon quantities or less, for consumer nonmotor fuel use. The person claiming the credit or refund must file Form 843 (Claim) or Form 4136 (Computation of Credit for Federal Tax on Gasoline and Special Fuels) and include with such form an attachment providing the information specified under § 48.6427-5(a)(1)-(4). No interest is payable on the credit or refund amount. See section 4082 and §§ 48.4081-1(e) (4), (5), and (8) for the definitions of gasoline, gasoline blend stocks, and additives. See § 48.6427-5 for requirements regarding the retention of records to substantiate the claim for credit or refund.

## PART 301—[AMENDED]

**Par. 22.** The authority for Part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805. * * *

**§ 301.7603-1 [Amended]**

**Par. 23.** Paragraphs (a) and (b) of § 301.7603-1 are amended by removing "6427(e)(2)" each place it appears and adding in its place "6427(j)(2)", and by removing "6424(d)(2)," each place it appears.

**§ 301.7604-1 [Amended]**

**Par. 24.** Paragraph (a) of § 301.7604-1 is amended by removing "6421(f)(2), or 7602" and adding in its place "6421(f)(2), 6427(j)(2), or 7602".

**§ 301.7605-1 [Amended]**

**Par. 25.** Paragraph (a) of § 301.7605-1 is amended by removing from the first sentence "6421(f)(2), or 7602" and adding in its place "6421(f)(2), 6427(j)(2), or 7602", and by removing from the last sentence "6420(e)(2) or 6421(f)(2)" and adding in its place "6420(e)(2), 6421(f)(2), or 6427(j)(2)".

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

[FR Doc. 87-26537 Filed 11-13-87; 4:59 pm]

BILLING CODE 4830-01-M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[FRL-3291-9]**

## Approval of the District of Columbia Stack Height Declarations

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notification of proposed approval of Stack Height Review Declaration and opportunity for public comment.

**SUMMARY:** EPA is proposing to approve a declaration by the District of Columbia that the recent revision to EPA's stack height regulations do not require revisions to any emission limitations in the District's State Implementation Plan (SIP). The intent of this action is to formally document that the District has satisfied its obligation under section 406 of the Clean Air Act to review its SIP with respect to EPA's revised stack height regulation.

**DATES:** Comments must be received on or before December 18, 1987.

**ADDRESSES:** Comments may be mailed to: David L. Arnold, Chief, Delmarva/DC Section (3AM13), US EPA, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, PA 19107.

Copies of the submissions are available for public inspection during normal business hours at the Environmental Protection Agency's address above or at the District's office: Dr. Joseph K. Nwude, Chief, Air Quality Control Branch, Environmental Control division, 5000 Overlook Ave., SW., Washington, DC 20032.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin A. Magerr, (3AM13) at the EPA Region III address above or call (215) 597-6863.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Clean Air Act. These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 719 F.2d 436 (DC Cir. 1983). On October 11, 1983, the Court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (*Alabama Power Co.* v. *Sierra Club (1984)*) and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the Court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985. Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and promulgated on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modify some of the criteria for determining Good Engineering Practice (GEP) stack height.

Pursuant to section 406(d)(2) of the Act, all States were required to (1) review and revise, as necessary, their State Implementation Plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations; and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, States were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation, as required by section 406.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, the State were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide ($SO_2$) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* $SO_2$ emission exemption from prohibited dispersion techniques. These sources were then subjected to a detailed review for conformance with the revised regulations.

### The District's Submission

EPA received the District's inventory of sources with stacks greater than 65m. and/or that emit more than 5000 tons per year on January 6, 1986. Additional Support material was received from the District on January 19, 1987. The District's submittal concluded that existing emission limitations have not

been affected by stack height credits above GEP or any other prohibited dispersion techniques such as merged stacks. The District's submittal also concluded that no sources emitted more than 5000 tons per year. The findings for each stack are summarized in Table 1.

The District review found four potential stacks affected by stack height regulation. All four stacks were considered "grand-fathered"[1] and exempt from any regulatory action.

TABLE 1.—A SUMMARY OF GRANDFATHERED SOURCES AND THE DISTRICT'S REVIEW

| Name of company | Documentation |
|---|---|
| St. Elizabeth's Hospital Stacks 1 and 2 | Engineering construction diagram dated 3-11-55. |
| Potomac Electric Power Company-Benning Road: | |
| Unit 15 | Drawing dated 6-68. |
| Unit 16 | Construction permit dated 3-30-70. |

## Public Participation

Since this action is not considered a revision to the SIP, the District was not required to hold a public hearing. However, since the District's findings are presently being published in this Notice, the public will have an opportunity to comment before EPA takes final action.

## Conclusion

EPA has reviewed the District's submission and finds that the documentation adequately supports its conclusion as expressed in Table 1. Therefore, EPA is proposing approval of the District's declaration that no revisions to emission limitations for existing sources are required under EPA's final stack height regulations or the terms of the District's SIP adopting these stack height regulations.

## List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur dioxide, Reporting and recording requirements.

Authority: 42 U.S.C. 7401-7642.

Date: May 11, 1987.

**James M. Seif,**

*Regional Administrator.*

Editorial Note. This document was received at the Office of the Federal Register November 13, 1987.

[FR Doc. 87-26560 Filed 11-17-87; 8:45 am]

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[1] Grandfathered stacks are stacks in existence on or before December 31, 1970.

## 40 CFR Part 52

[FRL-3291-6]

## Approval and Promulgation of Implementation Plans; Ohio

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Proposed rulemaking.

**SUMMARY:** USEPA is proposing action on a revision to the Ohio State Implementation Plan (SIP) for sulfur dioxide ($SO_2$) for the Ohio Power Muskingum River Power Plant located in Morgan and Washington Counties. This revision is in the form of an Administrative Order specifying that stack gas sampling (as specified in 40 CFR Part 60, Appendix A, Method 6) is the exclusive method for determining compliance with the sulfur dioxide emission limitations set forth in the Ohio rules for Muskingum.

The State submitted this revision in order to satisfy USEPA's requirement for an approvable, short-term compliance test method applicable to the State's $SO_2$ emission limitations for the Muskingum Plant.

**DATE:** Comments on this revision and on the proposed USEPA actions must be received by December 18, 1987.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Debra Marcantonio, at (312) 886-6088 before visiting the Region V office):

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Comments on this proposed rule should be addressed to (please submit an original and five copies if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Debra Marcantonio, Air and Radiation Branch, Region V (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6088.

**SUPPLEMENTARY INFORMATION:** On September 25, 1984 (49 FR 37644), USEPA proposed to approve revised emission limits for the Ohio Power Muskingum River Power Plant located in Morgan and Washington Counties as a revision to the Ohio State Implementation Plan (SIP) for sulfur dioxide ($SO_2$).

On November 12, 1986, Ohio submitted an additional revision to the plan. This revision is in the form of an Administrative Order specifying that stack gas sampling (as specified in 40 CFR Part 60, Appendix A, Method 6) is the exclusive test method for determining compliance with the sulfur dioxide emission limitations set forth in Ohio Administrative Code 3745-18-90(b) (1) and (2) and 3745-18-64(B) (1) and (2) for the Ohio Power Company Muskingum River Plant which USEPA proposed to approve on September 25, 1984. The State of Ohio held a public hearing on October 15, 1986 on this order. The Administrative Order represents a revision to the Ohio rules which will remain effective at the State level until a revised rule is issued (there is no expiration date contained in the Order). Any revision to the Order must also be submitted to USEPA as a revision to the SIP, and will not become effective at the Federal level until USEPA takes final rulemaking on the revision.

USEPA accepts a stack test (as specified in 40 CFR Part 60, Appendix A Method 6) as the sole compliance test method for the Muskingum River Plant. The current federally enforceable compliance test method which was promulgated by USEPA in 1976 is a stack test. Although this revision from the State is identical to the Federal test method, it is only applicable to the State $SO_2$ rules USEPA proposed to approve on September 25, 1984 (49 FR 37644). Whereas, the Federal test method is applicable to the current Federal SIP contained in § 52.1881(b) (47) and (63) for the Muskingum plant. Therefore, this revision would replace the federally promulgated test method for this source. USEPA notes, however, that the federally promulgated test method and emission limitations will remain effective until USEPA takes final action on both the revised emission limitations and associated test method for the Muskingum plant.

USEPA proposes to approve this compliance method as a revision to the SIP. The short-term averaging time of this method (approximately 3 hours) is consistent with the revised emission limits contained in the September 25, 1984, proposed for the Muskingum River Plant.

At the time USEPA takes final action on the emission limitations previously proposed on September 25, 1984, USEPA will also take final action on this complance test method.

Under 5 U.S.C. § 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirment of section 3 of Executive Order 12291.

Authority: 42 U.S.C. secs. 7401–7642.

Dated: March 30, 1987.

**Robert Springer,**

*Acting Regional Administrator.*

**Editorial note:** This document was received at the Office of Federal Register, November 13, 1987.

[FR Doc. 87–26561 Filed 11–17–87; 8:45 am]

BILLING CODE 6560–50–M

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## 40 CFR Parts 124, 264, and 270

**[FRL–3293–1]**

## Permit Modifications for Hazardous Waste Management Facilities

**AGENCY:** Environmental Protection Agency.

**ACTION:** Correction notice and extension of comment period.

**SUMMARY:** On September 23, 1987, the Environmental Protection Agency (EPA) proposed to amend its regulations under the Resource Recovery and Conservation Act (RCRA) governing modifications of hazardous waste management permits. The proposed rule would establish new procedures that apply to various types of changes that facility owners and operators may want to make at their facilities. Today's notice corrects two typographical errors and an omission from the preamble of the September 23 proposal. Today's notice also extends the comment period on these corrections until December 18, 1987.

**DATES:** Comments must be received on or before December 18, 1987.

**ADDRESSES:** The public must submit an original and two copies of their comments to: EPA RCRA Docket (S–212) (WH–562), 401 M Street, SW., Washington, DC 20460.

Place "Docket number F–87–PMHP–FFFFF" on your comments. The OSW docket for this proposed rulemaking is located in the sub-basement at the above address, and is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment by calling (202) 475–9327 to review docket materials. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page.

**FOR FURTHER INFORMATION CONTACT:** RCRA hotline at (800) 424–9346 (in Washington, DC call 382–3000) or Frank McAlister, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 382–2223.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On September 23, 1987 (52 FR 35838) EPA proposed to amend its RCRA regulations at 40 CFR Parts 124, 264, and 270 to establish new procedures for modifications of hazardous waste management permits. The Agency proposed to categorize all permit modifications into three classes and to establish administrative procedures for the approval of modifications in each of the three classes. The purpose of the proposed amendments is to provide both EPA and facility owners and operators more flexibility to change specified permit conditions, to expand public notification and participation opportunities, and to allow for expedited approval if no public concern exists for a proposed permit modification.

The September 23, 1987 proposed rule was developed through the process of regulatory negotiation by members of the Permit Modification Negotiating Committee. Members of this Committee included EPA and representatives of the regulated community, state agencies and public interest groups. The proposal was based on the Committee's signed agreement, which is included in the public docket identified in the beginning of this notice.

For additional details on the background and purpose of the permit modification proposal, see the September 23 preamble discussion.

### II. Appendix I Corrections

As part of its negotiated agreement, the Committee developed and assigned classifications for specific permit modifications. These classifications are contained in Appendix I to § 270.42 as proposed on September 23 (*See* 52 FR 35860). However, in the September 23 **Federal Register** notice, Appendix I contained two typographical errors concerning the permit modification classes.

First, item D(1)(f), "changes in the approved closure plan resulting from unexpected events occurring during partial or final closure," was indicated as a Class 3 modification. This should be a Class 2 modification.

The second error is in item G(5)(a) which addresses "management of new wastes in tanks that require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit." The proposal incorrectly identified this as a Class 2 modification. It should be a Class 3 modification.

These corrections to Appendix I are necessary to be consistent with the Committee agreement and to conform with the general criteria for the three classes as presented in the proposal.

### III. Change of Ownership or Operational Control of a Facility

The Committee discussed the issue of a change of ownership or operational control of a facility, but was undecided as to how to classify these modifications. Some committee members through that this modification should be subject to the Class 2 process (described in the September 23 proposal) to allow for public participation before the permit change would be approved. Other members felt that public participation on the change was not critical because the new owner or operator would still have to comply with the same environmental protection standards specified in the permit. The Committee failed to resolve this issue, but agreed that EPA should raise it for public comment. This notice describes EPA's preferred approach and solicits comment on the issue, which was inadvertently omitted from the September 23 notice.

Currently, a change in ownership of operational control is a minor modification if certain conditions are met (*see* 40 CFR 270.42(d)). The first condition is that no other change to the permit is necessary to transfer ownership or operational control. Second, the new owner or operator must submit a revised permit application at least 90 days before the scheduled change. Third, the old owner or operator must comply with the financial requirements in Subpart H of Part 264 until the new owner or operator has demonstrated that he is complying with this Subpart; this demonstration must occur within six months of the transfer.

EPA believes that the current regulations have worked well for changes of ownership and operational control and, to the extent possible, should be retained in the revised approach to permit modifications. Therefore, EPA favors classifying these changes as Class 1 permit modifications with prior Agency approval. This

approach would not only ensure the proper level of EPA oversight and control, but also would provide additional public notice and appeal opportunities, unlike the current regulations.

Under this approach the proposed Appendix I entry for a change in ownership or operational control would read as follows:

Changes in ownership or operational control of a facility, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees has been submitted to and approved by the Director. Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 CFR Part 264, Subpart H (Financial Requirements), until the new owner or operator has demonstrated to the Director that he is complying with the requirements of that Subpart. The new owner or operator must demonstrate compliance with Subpart H requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subpart H, the Director shall notify the old owner or operator in writing that he no longer needs to comply with Subpart H as of the date of demonstration. If the Director determines that a change in ownership or operational control also requires a Class 2 or Class 3 modification, procedures for these modifications shall be followed as well.

Consistent with the Committee agreement, EPA solicits comments on the appropriate permit modification class for cases where there is a change in the facility's owner or operator. In the absence of any persuasive comments, however, the Agency intends to classify this change as a Class 1 modification with prior Director approval, thereby retaining the current standard but with the Class 1 procedural enhancements.

**List of Subjects**

*40 CFR Part 124*

Administrative practice and procedure, Hazardous waste, Waste treatment and disposal.

*40 CFR Part 264*

Corrective action, Hazardous waste, Reporting and recordkeeping requirements, Waste treatment and disposal.

*40 CFR Part 270*

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Permit application requirements, Permit modification procedures, Waste treatment and disposal.

Date: November 13, 1987.

**J.W. McGraw,**

*Acting Assistant Administrator.*

[FR Doc. 87-26727 Filed 11-17-87; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 611 and 672

**[Docket No. 71146-7246]**

## Foreign Fishing; Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of proposed 1988 initial specifications of groundfish; request for comments.

**SUMMARY:** NOAA proposes 1988 initial apportionments of target quotas for each category of groundfish in the Gulf of Alaska. This action is necessary to provide the public with the Secretary of Commerce's preliminary determination of the initial apportionments and to obtain public comment on the appropriateness of those apportionments. On the basis of comments and after consultation with the North Pacific Fishery Management Council (Council), the Secretary will make 1988 initial apportionments providing for proper and full utilization of the groundfish resources.

**DATES:** Comments are invited until December 18, 1987. Comments received by December 4, 1987, will be presented to the Council at its December 9, 1987, meeting.

**ADDRESS:** Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

**SUPPLEMENTARY INFORMATION:**

### Background

This notice invites comments on three proposals related to groundfish management in the Gulf of Alaska for the 1988 fishing year: (1) Target quotes (TQs), (2) prohibited species catch (PSC) limits for fully utilized groundfish species, and (3) PSC limits for Pacific halibut.

(1) *Target Quotas*—TQs for groundfish species in the Gulf of Alaska are established by the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This FMP was developed under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations appearing at 50 CFR 611.92 and Part 672. The sum of the TQs for all species must fall within the combined optimum yield (OY) range established for these species of 116,000 to 800,000 metric tons (mt).

TQs are apportioned initially among domestic annual processing (DAP), joint venture processing (JVP), reserves, and total allowable level of foreign fishing (TALFF) for each species under §§ 611.92 and 672.20(a)(2). DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. JVP amounts are intended for joint ventures in which U.S. fishermen deliver their catches to foreign processors at sea. DAP plus JVP equals domestic annual harvest (DAH). TALFF amounts are intended for harvest by foreign fishermen. The reserves for the Gulf of Alaska are 20 percent of the TQ for each species category. These reserve amounts are set aside for possible reapportionment to DAP and/or JVP within DAH if the initial apportionments prove inadequate. Reserves which are not reapportioned to DAP or JVP may be reapportioned to TALFF.

Under §§ 611.92 and 672.20(a)(2), the Secretary, after consultation with the Council, specifies the TQ for each calendar year for each target species and the "other species" category, and apportions the TQs among DAP, JVP, reserves, and TALFF. The sum of the TQs must be within the OY range.

Under § 672.20(c)(1), the preliminary specification of 1988 DAP and JVP amounts are those harvested during 1987 plus any additional amounts the Secretary finds will be harvested by the U.S. fishing industry during 1988, not to exceed the OY. These additional amounts will reflect as accurately as possible the projected increases in U.S. processing and harvesting capacity and extent to which U.S. processing and harvesting will occur during the coming year. These projections will be based on the latest reliable information that is available, including industry surveys, market data, and stated intentions by representatives for the U.S. fishing industry.

The Council met September 23-25, 1987, to review information on the status of groundfish stocks. The information available to the Council was the same

as that available at its December 1986 meeting. New information, which is still being assembled by the Northwest and Alaska Fishery Center, will not be available to the Council until its December 1987 meeting. The Council accepted the recommendation of its Advisory Panel and Scientific and Statistical Committee for the preliminary acceptable biological catches (ABCs) for each target species and the "other species" category after these two bodies and the Council reviewed summaries of existing information provided by the Council's Gulf of Alaska groundfish Plan Team in its resource assessment document (RAD) during the September meeting.

The Plan Team's RAD is summarized as follows (see Table 1):

*Pollock*—The 1986 biomass of 496,300 mt was projected to reached 687,100 mt in 1987 and 866,600 to 1,051,500 mt in 1988, depending on the various recruitment and catch levels used in the projection. The forecasting model predicted increasing trends in biomass for catch levels up to 200,000 mt. A catch level of 250,000 mt resulted in a decreasing trend in biomass after 1988. The predicted increases in biomass are primarily due to the strong 1984 year class. The Plan Team set the combined ABC in the Western/Central Regulatory Area at 200,000 mt. No information is available to estimate an ABC for the Eastern Regulatory Area. The Plan Team recommends that a TQ be established for bycatch amounts for groundfish fisheries in the Eastern Regulatory Area.

*Pacific cod*—The Pacific cod stock was reported to be in good condition in the 1986 RAD based on biomass estimates from the NMFS 1984 trawl survey. Current estimates of biomass are derived from the NMFS 1984 trawl survey and potential yield from the stock is estimated to range from 111,000 to 206,900 mt. Recent catches of Pacific cod have been well beneath these estimates of potential yield. The Plan Team has set the 1988 gulfwide ABC at 111,000 to 206,900 mt at this time.

*Flounders*—Stocks of flounders are in good condition. Potential yield from this group was estimated by applying a ten percent exploitation rate against the 1984 biomass estimate, resulting in a yield of 537,000 mt. Flounder catches have been well below this estimate of potential yield. The Plan Team recommends an ABC of 537,000 mt apportioned to the individual management areas as follows: 101,000 mt to the Western Area; 346,000 to the Central Area; and 90,000 mt to the Eastern Area.

*"Other rockfish"*—The Plan Team recommends that a single ABC be applied to all "other rockfish" species with the exception of the shelf demersal assemblage of the Southeast Outside District. The category "other rockfish" will include the five species of the Pacific ocean perch complex, for which a separate management quota had been specified in previous years. The Plan Team set a Gulfwide for "other rockfish" (exclusive of shelf demersal rockfish in the Southeast Outside District, discussed below) of 10,500 mt. Based on the distribution of the "other rockfish" biomass estimates from the NMFS 1984 survey, the ABC is apportioned to the management areas as follows: 2,520 mt to the Western Regulatory Area; 3,465 mt to the Central Regulatory Area; and 4,515 mt to the Eastern Regulatory Areas.

*Shelf demersal rockfish*—No biomass or yield estimates are available for shelf demersal rockfish. This rockfish assemblage is the target of a longline fishery in the Southeast Outside District. Information from the Alaska Department of Fish and Game on this rockfish assemblage suggests that the population is declining. The Plan Team set the ABC for shelf demersal rockfish in the Southeast Outside district at 625 mt, based on the performance of the fishery in 1987.

*Thornyhead rockfish*—Longline survey indices of abundance and of mean lengths in trawl surveys have shown recent declines. The Plan Team recommends the ABC remain at 3,750 mt.

*Sablefish*—Sablefish have been determined to be in good condition due to good recruitment from the 1977, 1980, and 1981 year classes. The 1987 Japan-U.S. cooperative longline survey and the NMFS trawl survey will provide more current information on the resource and will be available for the December 1987 Council meeting. Estimates of the potential yield from the stock are still being evaluated. At this time the Plan Team recommends that the ABC remain at 25,000 mt, distributed among the areas and districts as follows: Western–3,750 mt; Central–11,000 mt; West Yakutat–5,000 mt; and Southeast Outside/East Yakutat–5,250 mt.

*"Other species"*—No recommendations were made by the Plan Team for this group. FMP procedures define the reasonable quota for this category as 5 percent of the sum of the TQs established for the other groundfish categories.

At its September 1987 meeting, the Council acknowledged that no new biological information exists and adopted the information available at the beginning of the 1987 fishing year as being the best available. Except for pollock, proposed 1988 ABCs for the groundfish species are the same as the 1987 ABCs. The Council adopted an ABC for pollock of 200,000 mt, based on a new analysis of pollock year classes. The Council requested that the Secretary consider these estimates under § 672.20(a)(2). It also adopted specifications as of September 1987, for DAH (DAH=DAP+JVP), DAP, JVP, reserve, and TALFF and requested that the Secretary publish these amounts as specifications for 1988 for comment under § 672.20(c)(1).

This notice, which follows the current requirements of the FMP, differs in two respects from the proposed amounts in the mailing which the Council has submitted to the public for review. First, the Council has adopted the term "total allowable catch" (TAC) in its notice, instead of the term "target quota" (TQ) which appears in this notice. Second, the Council has included Atka mackerel and squid in its "other species" category, thus eliminating these two species from the target species category and combining them with a category that has always been by catch. Both of these changes are included in Amendment 16 to the FMP, which the Council approved at its September meeting but has not yet submitted for Secretarial review. Because there has yet been no change in the FMP's TQ terminology and target species combinations, and this notice follows them, there are unavoidable differences between this notice and the Council's mailing. To summarize, the term TQ in this notice is synonymous with the term TAC in the Council's mailing, and the specifications in this notice for Atka mackerel and squid are included in the "other species" category in the Council's mailing.

The Secretary has reviewed the Council's recommendations for ABCs and the current specifications of TQ, DAP, JVP, reserves, and TALFF. He hereby publishes them as proposed initial specifications, subject to change following the December 1987 Council meeting. The FMP stipulates that 20 percent of each TQ be set aside in a reserve for possible reapportionment at a later date. At this time, anticipating that U.S. fishermen will need all of the TQ amounts for DAH, the Secretary is proposing that reserves for each species category be apportioned immediately to either DAP or JVP. Only those amounts that the Secretary has preliminarily determined will not be needed by DAP are proposed to be apportioned to JVP at

this time. The Regional Director does not know the extent to which U.S. processing and harvesting will occur during the coming year. Such information will be obtained from the public comments on this notice and the Council's October 6, 1987, "Dear Reviewer" letter to the public, which also requests public comments. TALFF is set at zero, because all species are expected to be fully utilized by U.S. fishermen.

TABLE 1.—PRELIMINARY ABCs, TQs, DAPs, JVPs, RESERVES, AND TALFFs OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), OUTSIDE SHELIKOF (OUT. SHEL.), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE/EAST YAKUTAT (SEO-EYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA FOR 1988 (DAH = DAP + JVP)

| Species | Area [1] | ABC | TQ | Reserve | DAP | JVP | TALFF |
|---|---|---|---|---|---|---|---|
| Pollack | W/C | 200,000 | 84,000 | 0 | 40,000 | 44,000 | 0 |
| | Out. Shel | N/A | 20,000 | 0 | 0 | 20,000 | 0 |
| | E | N/A | 4,000 | 0 | 4,000 | 0 | 0 |
| Total | | 200,000 | 108,000 | 0 | 44,000 | 64,000 | 0 |
| Pacific cod | W | 29,700–55,860 | 15,000 | 0 | 14,700 | 300 | 0 |
| | C | 61,600–115,865 | 33,000 | 0 | 31,900 | 1,100 | 0 |
| | E | 18,700–35,175 | 2,000 | 0 | 2,000 | 0 | 0 |
| Total | | 110,000–206,900 | 50,000 | 0 | 48,600 | 1,400 | 0 |
| Flounders | W | 101,000 | 3,000 | 0 | 2,550 | 450 | 0 |
| | C | 346,000 | 10,000 | 0 | 4,000 | 6,000 | 0 |
| | E | 90,000 | 500 | 0 | 500 | 0 | 0 |
| Total | | 537,000 | 13,500 | 0 | 7,050 | 6,450 | 0 |
| Rockfish [2] | W | 2,520 | 2,160 | 0 | 2,160 | 0 | 0 |
| | C | 3,465 | 2,970 | 0 | 2,970 | 0 | 0 |
| | E | 4,515 | 3,870 | 0 | 3,870 | 0 | 0 |
| Total | | 10,500 | 9,000 | 0 | 9,000 | 0 | 0 |
| Shelf dem. rockfish [3] | SEO | 625 | 625 | 0 | 625 | 0 | 0 |
| Thornyhead rockfish | GW | 3,750 | 3,750 | 0 | 2,250 | 1,500 | 0 |
| Sablefish | W | 3,750 | 3,000 | 0 | 3,000 | 0 | 0 |
| | C | 11,000 | 8,800 | 0 | 8,800 | 0 | 0 |
| | WYK | 5,000 | 4,000 | 0 | 4,000 | 0 | 0 |
| | SEO/EYK | 5,250 | 4,200 | 0 | 4,200 | 0 | 0 |
| Total | | 25,000 | 20,000 | 0 | 20,000 | 0 | 0 |
| Atka mackerel | W | N/A | 100 | 0 | 80 | 20 | 0 |
| | C | N/A | 100 | 0 | 80 | 20 | 0 |
| | E | N/A | 40 | 0 | 40 | 0 | 0 |
| Total | | N/A | 240 | 0 | 200 | 40 | 0 |
| Squid | GW | N/A | 5,000 | 0 | 3,000 | 2,000 | 0 |
| Other Species [4] | GW | N/A | 10,506 | 0 | 6,736 | 3,770 | 0. |
| Total | | 908,125–1,005,025 | 220,621 | 0 | 141,461 | 79,160 | 0 |

[1] See figure 1 of § 672.20 for description of regulatory areas/districts.
[2] The category "other rockfish" includes all fish of the genus *Sebastes* except shelf demersal rockfish
[3] Shelf dem. Shelf demersal rockfish includes *Sebastes paucispinus* (Bocaccio), *S. nebulous* (China rockfish), *S. caurinus* (Copper rockfish), *S. malliger* (Quillback rockfish), *S. proiger* (Redstripe rockfish), *S. helvomaculatus* (Rosethorn rockfish), *S. brevispinis* (Silvergrey rockfish), S. nigrocinctus (Tiger rockfish), *S. ruberrimis* (Yelloweye rockfish), *S. pinningera* (Canary rockfish).
[4] The category "other species" includes sculpins, sharks, skates, eulachon, smelts, and octopus. The TQ is equal to 5 percent of the TQs of the target species.

The results of the industry survey, which NMFS will conduct prior to the Council's December 1987 meeting, may show that U.S. fishermen intend to harvest certain species in excess of the initial specifications of DAP and up to the amount equal to TQ. Because reapportioning the entire reserve to DAP would result in zero amounts being available to JVP or TALFF, comments are also invited on appropriate bycatch amounts that might be required as bycatch in JVP or TALFF fisheries targeting on other groundfish species.

Any additional information on the actual plans of U.S. fishermen and processors for harvesting and processing groundfish will be considered by the Secretary when specifying final PSC limits and annual TQs for each target species and 1988 initial apportionments of TQs in the Gulf of Alaska.

(2) *Fully Utilized Species*—Section 672.20(b)(1) specifies that, if the Secretary determines, after consultation with the Council, that the TQ for any species or species group will be harvested in the DAP fishery, he may specify for 1988 the PSC limit applicable to the JVP and TALFF fisheries for that species or species group. Any PSC limit specified is for bycatch only and cannot be retained. During 1987, the Secretary had specified PSC limits for sablefish, Pacific ocean perch (POP), and "other rockfish" that were applicable to JVP. These respective amounts were: sablefish—330 mt; POP—120 mt; and "other rockfish"—200 mt. For 1988 the proposed PSC for sablefish is 330 mt, and POP and "other rockfish" will be combined as "other rockfish" for which a PSC limit of 320 mt is proposed for 1988. Comments are invited on these PSCs. Proposed PSC limits are subject to change based on public comments and recommendations made by the Council at its December 1987 meeting.

(3) *C. Halibut Prohibited Species Catch Limits*—Section 672.20(f)(2)(i) specifies a framework procedure for setting PSC limits for Pacific halibut. The Secretary, after consultation with the Council, will publish a notice in the **Federal Register** as soon as practicable after October 1 of each year, specifying the proposed Pacific halibut PSCs in the

regulatory areas for JVP and DAP vessels. If the Regional Director determines that the catch of Pacific halibut by U.S. vessels fishing in DAP or JVP operations will reach a PSC limit, he will publish a notice in the **Federal Register** prohibiting fishing with trawl gear other than off-bottom trawl gear for the rest of the year by the vessels and in the area to which the PSC limit applies. He may allow some of those vessels to continue to fish for groundfish using bottom trawl gear under specified conditions.

The Secretary, through the NMFS Regional Director, has consulted with the Council and hereby publishes the proposed halibut PSC limits for 1988. The PSC is 3,000 mt for DAP and 200 mt for JVP. The PSC limits are derived from bycatch rates (see table, below) experienced by vessels while targeting on groundfish with bottom trawls and with midwater trawls and by vessels targeting on Pacific cod and sablefish with hook-and-line gear.

TABLE OF 1987 GULF OF ALASKA DAP AND JVP BYCATCH RATES (PERCENT) OF PACIFIC HALIBUT CAUGHT IN THE WESTERN (W) AND CENTRAL (C) REGULATORY AREAS WHILE TRAWLING FOR GROUNDFISH WITH BOTTOM TRAWLS AND MIDWATER TRAWLS AND WHILE FISHING FOR PACIFIC COD AND SABLEFISH WITH HOOK-AND-LINE (HL) GEAR

| | Bottom trawl | | Mid-water trawl | | Cod HL | | Sable fish HL | |
|---|---|---|---|---|---|---|---|---|
| | W | C | W | C | W | C | W | C |
| DAP | 2.53 | 2.53 | 0.06 | 0.06 | 5.23 | 9.15 | 1.2 | 1.2 |
| JVP | 2.53 | 2.53 | 0.06 | 0.06 | 5.23 | 9.15 | | |

This apportionment between DAP and JVP is provisional at this time and will be reviewed at the December 1987 Council meeting when the Council makes its final recommendations. Public comment on the proposed PSC limits will be accepted for 30 days after this notice is published.

### Other Matters

This action is taken under §§ 611.92 and 672.20 and complies with Executive Order 12291.

### List of Subjects

*50 CFR Part 611*

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

*50 CFR Part 672*

Fisheries, Reporting and recordkeeping requirements.

Dated: November 13, 1987.

**Bill Powell,**

*Executive Director, National Marine Fisheries Service.*

[FR Doc. 87-26596 Filed 11-17-87; 8:45 am]

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## 50 CFR Parts 611 and 675

**[Docket No. 71147-7247]**

## Groundfish of the Bering Sea and Aleutian Islands

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of preliminary 1988 initial specifications of groundfish; request for comments.

**SUMMARY:** NOAA proposes 1988 initial specifications of total allowable catches (TACs) and initial apportionments for each category of groundfish in the Bering Sea and Aleutian Islands (BSAI) area. This action is necessary to solicit public comments on preliminary determinations of the initial specifications of TACs and apportionments of groundfish that may be harvested in the BSAI area in 1988. The Secretary of Commerce (Secretary) will make final the 1988 initial specifications of TACs and apportionments based on public comments received, the best available information on the biological condition of groundfish stocks and the socioeconomic condition of the fishing industry, and consultation with the North Pacific Fishery Management Council (Council).

**DATE:** Comments are invited until December 18, 1987. Comments received by December 4, 1987, will be presented to the Council at its December 9, 1987, meeting.

**ADDRESS:** Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668.

**FOR FURTHER INFORMATION CONTACT:** Jay J.C. Ginter (Fishery Management Biologist, NMFS), 907-586-7229.

**SUPPLEMENTARY INFORMATION:** Groundfish fisheries in the BSAI area are governed by Federal regulations at 50 CFR 611.93 and Part 675 which implement the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the Council and approved by the Secretary under the Magnuson Fishery Conservation and Management Act.

The FMP and its implementing regulations at § 675.20(a)(2) require the Secretary, after consultation with the Council, to specify each calendar year the TAC for each target species and the "other species" category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt). The regulations at § 675.20(a)(6) further require the Secretary annually to publish preliminary TACs and the apportionments of each TAC and receive public comment on these amounts for a period of 30 days. Table 1 satisfies this requirement. After considering all timely comments and after consultation with the Council, the Secretary will publish the final annual TACs and initial apportionments for 1988 as soon as practicable after December 15, 1987.

The specified TACs for each species are based on the most recent biological and socioeconomic information. The Council, its Advisory Panel, and its Scientific and Statistical Committee, at their September 1987 meetings, reviewed preliminary biological information about the condition of groundfish stocks in the BSAI area. This information was compiled by the Council's BSAI groundfish Plan Team and presented in the 1987 draft resource assessment document (RAD). The Plan Team annually produces such a document as the first step in the process of specifying TACs. The RAD contains a reveiw of the latest scientific analyses and estimates of each species' biomass, maximum sustainable yield (MSY), acceptable biological catch (ABC), and other biological parameters. Many of the ABCs calculated for 1988 are considerably higher than those for 1987. This is due in some cases to increases in biomass estimates. In most cases, however, these increases are due to a new guideline for calculating ABCs. This guideline, which is part of Amendment 11 to the FMP, defines ABC as the MSY

exploitation rate multiplied by the estimated biomass, unless there is biological justification to calculate ABC differently. Details of this and other calculation procedures are discussed in the 1987 draft RAD which is available on request from the Council.

A summary of ABCs for each species for 1988 and other biological data from the 1987 draft RAD is provided below. The Plan Team will revise the draft RAD at its November 1987 meeting and produce a final RAD with ABC recommendations prior to the Council's December 1987 meeting. At that time, the Council will develop TAC recommendations to the Secretary which are derived from the ABCs and adjusted for other biological and socioeconomic considerations. The TACs may be further adjusted so that their sum does not exceed the total maximum optimum yield allowed by the FMP.

The amount of groundfish in each TAC initially is reduced by 15 percent. The sum of these 15 percent amounts is designated as the reserve. The reserve is not designated by species or species group and under § 675.20(a)(3) any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing.

The initial TAC (ITAC), which is equal to 85 percent of TAC, is then apportioned between the domestic annual harvest (DAH) category and the total allowable level of foreign fishing (TALFF). The ITAC for each target species and the "other species"category at the beginning of the year equals the DAH plus TALFF.

Each DAH amount is further apportioned between U.S. vessels working in joint ventures with foreign processing vessels (JVP) and U.S. vessels processing their catch on board or delivering it to U.S. processors (DAP). The initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director). The initial DAP and JVP amounts for each target species and the "other species" category equal the actual DAP and JVP of the previous year plus any additional amounts the Regional Director projects will be used by the U.S. fishing industry during the coming year. This projection is based on the latest reliable information that is available, including industry surveys, market data and the stated intentions of U.S. fishing industry representatives.

The preliminary TACs, ITACs, reserve, and initial apportionments of groundfish in the BSAI area for 1988 are given in Table 1 of this notice. For purposes of this notice, the TACs and ITACs in Table 1 are the same as those for 1987, and the DAP, JVP, DAH, and TALFF amounts in Table 1 represent current apportionments of the 1987 TACs. The initial 1988 reserve footnoted in the table is 300,000 mt. The Council approved the amounts in Table 1 for public review at its September 1987 meeting. These amounts are subject to change as a result of public comment, additional analysis of the biological condition of the groundfish stocks, and consultation with the Council at its December 1987 meeting.

**Summary of Biological Condition and ABCs**

*Pollock*—The estimated abundance of pollock remains relatively high and has not changed significantly from last year. The Plan Team recommended using a higher exploitation rate than was used last year because various population dynamics theories suggest that exploitation of the pollock resource can be increased without loss of its future productivity. The Plan Team's recommended exploitation rate is 16 percent, which is within the historical range of 10 to 18 percent. Using the 16 percent exploitation rate yields an estimated ABC of 1,410,000 mt for the Bering Sea (BS) subarea and 160,000 mt for the Aleutian Islands (AI) subarea. Alternatively, the ABC could be calculated by using the MSY exploitation rate which could produce ABCs for the BS and AI subareas that are about twice as large as those recommended by the Plan Team.

*Pacific ocean perch* (POP)—The fisheries for POP are managed as a complex of five species. Generally, POP stocks continue to remain low in abundance relative to the biomass levels during the early 1960s. However, recruitment of young fish into the exploitable population appears to be strong. The estimated current biomass for the BS subarea is 64,100 mt and for the AI subarea is 157,900 mt. The ABCs for 1988 in the BS and AI subareas of 6,000 mt and 16,600 mt, respectively, were calculated using an exploitation rate of 6 percent. Comparable 1987 ABCs using the historical 5 percent exploitation rate were 3,800 mt and 10,900 mt respectively.

*Other rockfishes*—This category, traditionaly managed as a unit, includes all species of *Sebastes* and *Sebastolobus* other than those in the POP complex. The estimated biomass for the BS subarea is 7,100 mt and for the AI subarea is 18,500 mt. Although the 1986 survey indicates an increase in biomass over the 1980 and 1983 estimates, relatively wide and overlapping variance ranges around these estimates indicate that point estimates for these years may not be significantly different. The 1988 ABCs calculated for the BS and AI subareas, at 400 mt and 1,100 mt respectively, are slightly lower than comparable 1987 ABCs. This reflects a lower confidence in the biomass estimates and a decision to use the mean biomass from survey data to calculate ABC in lieu of assumptions about the portion of the resource exposed to the survey. This resulted in lower biomass estimates used to calculate the 1988 ABC. This effect was conditioned by using the MSY exploitation rate used for POP (6 percent) for 1988 ABCs in lieu of the rate used for 1987 ABCs (5 percent).

*Sablefish*—The relative abundance of sablefish appears to have declined slightly since 1985, although current levels are still higher than those of the early 1980s. The best estimate of sablefish biomass is for 1986 which in the BS subarea is 56,500 mt and in the AI subarea is 96,300 mt. Calculating 1988 ABCs from these data using various methods results in an ABC range for the BS subarea of 3,900 mt to 6,800 mt and for the AI subarea of 6,700 to 11,600 mt. These amounts contrast with 1987 ABCs for the BS and AI subareas of 3,700 mt and 4,000 mt respectively. The large ABCs calculated for 1988 reflect the user of higher exploitation rates.

*Atka mackerel*—From the most recent trawl survey in 1986, the biomass of Atka mackerel was estimated to be 545,000 mt, but this estimate has an extremely large coefficient of variation. There appear to be no strong year classes in the exploitable population at present. Stock abundance is believed to have decreased since 1985. The 1988 ABC of 21,000 mt reflects this decrease when compared to the 1987 ABC of 30,800 mt.

*Pacific cod*—Estimates of the Pacific cod biomass in the BSAI area have remained relatively high (above one million mt) and constant since 1983. The same population model used last year was used this year to calculate an ABC of 326,000 mt. The decrease in this ABC from last year's ABC of 400,000 mt is due to a change in the age composition of the resource and an overprojection of the 1987 biomass from last year's population model. An alternative procedure of calculating and ABC using the MSY exploitation rate would result in an ABC range of between 326,000 mt and 700,000 mt.

*Yellowfin sole*—Current estimates of yellowfin sole abundance remain relatively high. These may decrease in the near future, however, due to a

reduced abundance of late-1970s year classes which are now recruiting to the exploitable population. Estimates of the yellowfin sole biomass vary but are about two million mt. The ABC of yellowfin sole for 1988 is calculated to be 303,000 mt or within a range of 257,000 mt to 349,000 mt. The increase in this ABC over last year's ABC of 187,000 mt is due to the use of 12.3 percent as an exploitation rate in lieu of the historical rate of 10 percent. Using the MSY exploitation rate could result in considerably higher rates than either the 12.3 or 10 percent exploitation rates.

*Greenland turbot*—The Greenland turbot resource continues to decline in abundance, a trend since 1980, due to poor recruitment of juvenile fish to the older, exploitable population. Although the 1987 biomass estimate of young juvenile Greenland turbot on the eastern Bering Sea shelf is up from the 1986 estimate, this increase is considered negligible when compared to estimates from earlier years. Biomass estimates of older juveniles and adult Greenland turbot on the continental slope show a persistent decline. The 1988 ABC of 19,020 mt was calculated by multiplying the MSY exploitation rate by the 1988 projected biomass from the stock reduction model. This ABC is only 1,000 mt less than the 1987 ABC which was based on the same biomass model but a different exploitation scenario.

*Arrowtooth flounder*—The abundance of arrowtooth flounder has increased substantially in recent years. The current biomass of this species is estimated to be 490,700 mt and is in excellent condition. This is one reason for the substantial increase in the 1988 ABC of 109,500 mt over that for 1987 of 30,900 mt. The other reason is that the 1988 ABC was calculated using the MSY exploitation rate of 23 percent in lieu of the traditional rate of 10 percent used a calculate the 1987 ABC.

*Other flatfishes*—This groundfish category is composed of rock sole, flathead sole, Alaska plaice, and miscellaneous flatfishes. All species in this group appear to be in relatively high abundance. The current estimated biomass in the BS subarea for all "other flatfishes" is 2,255,800 mt. Rock sole accounts for 55 percent of this total. The MSY exploitation rate was used to calculate the 1988 ABC for all species in this category except the miscellaneous flatfishes. This resulted in a total ABC for this category for 1988 of 440,700 mt which is over twice the size of the 1987 ABC.

*Squid*—Information on the distribution, abundance, and biology of squid stocks is insufficient for standard analysis of biomass and MSY. Based on catch data primarily from foreign fisheries, harvests of 10,000 mt annually are believed to be sustainable. The 1988 ABC is therefore specified at 10,000 mt, as it was for 1987.

*Other species*—This category includes species of sculpins, sharks, skates, eulachon, smelts, capelin, and octopus. This group of groundfish is currently of minor economic value; fishing effort generally is not targeted on any of these species. However, they have potential economic value and are important ecosystem components. The estimated biomass in the combined BS and AI subareas in 1987 is 618,300 mt. No significant change has been seen in this stock size since 1986. Harvesting this stock at the estimated MSY of 59,000 mt represents an exploitation rate of 10 percent. The 1988 ABC is equal to this MSY estimate. The increase in this ABC over the 1987 ABC of 49,500 mt is due only to the use of the MSY exploitation for 1988 and does not reflect an actual abundance increase.

## Other Matters

This action is authorized under §§ 611.93(b) and 675.20 and complies with Executive Order 12291.

## List of Subjects

*50 CFR Part 611*

Fisheries, Foreign relations.

*50 CFR Part 675*

Fisheries.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: November 13, 1987.

**Bill Powell,**

*Executive Director, National Marine Fisheries Service.*

TABLE 1.—PRELIMINARY 1988 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1]

| Species | 1988 TAC [7] | Initial TAC [2] | DAP [3] | JVP [4] | DAH [5] | TALFF [6] |
|---|---|---|---|---|---|---|
| Pollock: | | | | | | |
| BS | 1,200,000 | 1,020,000 | 185,987 | 1,009,013 | 1,195,000 | 5,000 |
| AI | 88,000 | 74,800 | 7,210 | 80,790 | 88,000 | 0 |
| Pacific Ocean Perch: | | | | | | |
| BS | 2,850 | 2,423 | 2,423 | 120 | 2,543 | 17 |
| AI | 8,175 | 6,949 | 6,786 | 563 | 7,349 | 0 |
| Other Rockfishes: | | | | | | |
| BS | 450 | 382 | 382 | 59 | 441 | 9 |
| AI | 1,430 | 1,215 | 1,001 | 304 | 1,305 | 0 |
| Sablefish: | | | | | | |
| BS | 3,700 | 3,145 | 3,310 | 350 | 3,660 | 40 |
| AI | 4,000 | 3,400 | 3,317 | 83 | 3,400 | 0 |
| Atka Mackerel: | | | | | | |
| BSAI | 30,800 | 26,180 | 250 | 30,540 | 30,790 | 10 |
| Pacific Cod: | | | | | | |
| BSAI | 280,000 | 238,000 | 91,767 | 94,938 | 186,705 | 73,295 |
| Yellowfin Sole: | | | | | | |
| BSAI | 187,000 | 158,950 | 100 | 181,900 | 182,000 | 5,000 |
| Greenland Turbot: | | | | | | |
| BSAI | 20,000 | 17,000 | 15,213 | 67 | 15,280 | 1,750 |
| Arrowtooth Flounder: | | | | | | |
| BSAI | 9,795 | 8,326 | 830 | 3,363 | 4,193 | 5,602 |
| Other Flatfishes: | | | | | | |
| BSAI | 148,300 | 126,055 | 17,043 | 71,972 | 89,015 | 37,080 |

TABLE 1.—PRELIMINARY 1988 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1]—Continued

| Species | 1988 TAC [7] | Initial TAC [2] | DAP [3] | JVP [4] | DAH [5] | TALFF [6] |
|---|---|---|---|---|---|---|
| Squid: | | | | | | |
| BSAI | 500 | 425 | 4 | 48 | 52 | 393 |
| Other Species: | | | | | | |
| BSAI | 15,000 | 12,750 | 500 | 10,000 | 10,500 | 4,500 |
| Total | 2,000,000 | 1,700,000 | 336,123 | 1,484,110 | 1,820,233 | 132,696 |

[1] Amounts are in metric tons.
[2] Initial TAC (ITAC) = 0.85 of TAC; initial reserve TAC −ITAC = 300,000 mt.
[3] DAP = domestic annual processing.
[4] JVP = joint venture processing.
[5] DAH = domestic annual harvest = DAP + JVP.
[6] TALFF = total allowable level of foreign fishing.
[7] These 1988 TACs are the same as the 1987 TACs pending consideration of a final RAD at the December 1987 Council meeting. DAP, JVP, DAH, and TALFF amounts in the table reflect current apportionments of the 1987 TACs.

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# Notices

Federal Register
Vol. 52, No. 222
Wednesday, November 18, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews

**AGENCY:** International Trade Administration, Imports Administration, Commerce.

**ACTION:** Notice of initiation of antidumping and countervailing duty administative reviews.

**SUMMARY:** The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

**EFFECTIVE DATE:** November 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone: (202) 377-5253/2786.

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a(a)(1), (a)(2), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

#### Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than November 30, 1988.

| Antidumping duty proceedings and firms | Periods to be reviewed |
|---|---|
| Pressure sensitive Plastic Tape from Italy: | |
| Boston | 10/01/85-09/30/87 |
| Irplastnastri | 10/01/86-09/30/87 |
| Manuli | 10/01/86-09/30/87 |
| N.A.R. | 10/01/86-09/30/87 |
| Barium Chloride from the People's Republic of China: | |
| Sinochem | 10/01/86-09/30/97 |
| Shop Towels of Cotton from the People's Republic of China: | |
| China National Native Produce & Animal By-Products Import & Export Corp | 10/01/86-09/30/87 |
| China Resources Transports | 10/01/86-09/30/87 |
| Chinatex | 10/01/86-09/30/87 |
| Chinatex/Trans-Atlantic Sales | 10/01/86-09/30/87 |
| CNART | 10/01/86-09/30/87 |
| CNART/Cuisininere | 10/01/86-09/30/87 |
| CNART/Fabric Enterprise | 10/01/86-09/30/87 |

| Countervailing duty proceeding | Period to be reviewed |
|---|---|
| Certain Iron Metal Castings from India | 01/01/86-12/31/86 |
| Canned Tuna from the Philippines | 01/01/86-12/31/86 |
| Certain Carbon Steel Products from Sweden | 01/01/86-12/31/86 |

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and sections §§ 353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c)).

Date: November 10, 1987.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 87-26587 Filed 11-7-87; 8:45 am]

BILLING CODE 3510-DS-M

**[A-122-605]**

### Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Canada

**ACTION:** Notice.

**SUMMARY:** We have determined that color picture tubes from Canada are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

**EFFECTIVE DATE:** November 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Brinkmann, (202) 377-3965 or John Kenkel, (202) 377-3530, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

#### Final Determination

We have determined that color picture tubes from Canada are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

#### Case History

On June 24, 1987, we made an affirmative preliminary determination (52 FR 24320, June 30, 1987). The following events have occurred since the publication of that notice.

On July 6, 1987, Mitsubishi Electronics Industries Canada, Inc. (Mitsubishi), the respondent in this case, requested that the Department extend the period for the final determination until not later than 135 days after the date on which the Department published its preliminary determination. The Department granted this request, and postponed its final determination until not later than November 12, 1987 (52 FR 27696, July 23, 1987).

Questionnaire responses from the respondent were verified in Canada from June 29 to July 3, 1987, and in the United States from August 24 to August 31, 1987.

Interested parties submitted comments for the record in their pre-hearing briefs of October 1, 1987, and in their post-hearing briefs of October 9, 1987.

#### Scope of Investigation

The products covered by this investigation are color picture tubes (CPTs) which are provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520. The corresponding Harmonized System (HS) numbers are 8540.11.00.10, 8540.11.00.20, 8540.11.00.30,

8540.11.00.40, 8540.11.00.50 and 8540.11.00.60.

CPTs are defined as cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing.

Petitioners have also requested that the Department examine CPTs which are shipped and imported together with other parts as television receiver kits (which contain all parts necessary for assembly into complete television receivers), or as incomplete television receiver assemblies that have a CPT as well as additional components. Color television receiver kits ("kits") are provided for the TSUSA item 684.9655, while incomplete televison receiver assemblies ("assemblies") are provided for the TSUSA item 684.9656, 684.9658 and 684.9660.

During the period of investigation, no exporter in Canada sold kits and assemblies in the United States. Thus, the issue before the Department is whether to include in the scope of this proceeding future shipments of CPTs which are classified for Customs purposes as kits or assemblies. We have determined that where a CPT is shipped and imported together with all parts necessary for assembly into a complete television receiver (i.e., as a "kit"), the CPT is excluded from the scope of this investigation. The Department has previously determined in the Japanese (46 FR 30163, June 5, 1981) and Korean (49 FR 18336, April 30, 1984) television receiver ("CTV") cases that kits are to be treated for purposes of the antidumping statute as television receivers, not as a collection of individual parts. Stated differently, a kit and a fully-assembled television are a separate class or kind of merchandise from the CPT. Accordingly, we have determined that when CPTs are shipped together with other parts as television receiver kits, they are excluded from the scope of this investigation. We will determine in any future administrative review whether factual circumstances similar to those found by the Department in the Japanese CPT investigation warrant including Canadian kits with this proceeding as transshipped CPTs.

With respect to CPTs which are imported for Customs purposes as incomplete televison assemblies, we have determined that these entries are included within the scope of this investigation unless both of the following criteria are met: (1) The CPT is "physically integrated" with other television receiver components in such a manner as to constitute one inseparable amalgam: and, (2) the CPT does not constitute a significant portion of the cost or value of the items being imported. This determination is driven by several considerations. First, an order against CPTs that excludes any CPT shipped with other television components could easily be circumvented by simply shipping all future CPTs to the United States in conjunction with at least one other television component. Secondly (and conversely), there must be a point at which a part, such as a CPT, becomes so integrated within another class or kind of merchandise that the part can no longer be regarded as being imported for purposes of the antidumping duty statute. Further, the statute does not permit an interpretation which could result, for example, in future petitions against car radios imported within fully-assembled cars or semiconductors imported within fully-assembled mainframe computers, when the part in question is inconsequential or small compared to the cost or value of the product of which it is a part. However, where the part (here, a CPT) constitutes a substantial portion of the cost or value of the article being imported (here, an assembly), the dominant article does not lose its autonomy, character and use merely because it is imported with several other less important component parts. We accordingly determine that assemblies are within the scope of this investigation.

**Fair Value Comparison Methodology**

To determine whether sales of CPTs in the United States were made at less than fair value, we compared the United States price to the foreign market value of such or similar merchandise for the period June 1, 1986 through November 30, 1986.

*Foreign Market Value*

As provided in section 773(a) of the Act, we used home market sales to represent foreign market value for sales of CPTs by Mitsubishi. In order to determine whether there were sufficient sales of the merchandise in the home market to serve as the basis for calculating foreign market value, we established separate categories of such or similar merchandise, based on the CPT screen size measured diagonally in inches. We considered any CPT sold in the home market that was within plus or minus two inches in screen size of the CPT sold in the U.S. to be such or similar merchanise.

We then compared the volume of home market sales within each such or similar category to third country sales (excluding U.S. sales), in accordance with section 773(a)(1) of the Act. We determined that for Mitsubishi, there were sufficient home market sales to unrelated customers for each such or similar category to form an adequate basis for comparison to the CPTs imported into the United States. Therefore, foreign market value was calculated using home market sales.

*Purchase Price*

As provided in section 772(b) of the Act, we used the purchase price to represent the United States price for sales of CPTs made by Mitsubishi in the United States to unrelated purchasers prior to importation of the CPTs into the United States. The Department determined that purchase price and not exporter's sales price was the most appropriate indicator of United States price based on the following elements.

1. The merchandise was purchased or agreed to be purchased by the unrelated U.S. buyer to the date of importation from the manufacturer or producer of the merchandise for exportation to the United States.

2. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer.

3. Direct shipments from the manufacturer to the unrelated buyer were the customary commercial channel for sales of this merchandise between the parties involved.

Where all the above elements are met, as here, we regard the primary marketing functions and selling costs of the exporter as having occurred prior to importation, in the country of exportation and not in the United States. In such instances, we consider purchase price to be the appropriate basis for calculating United States price.

*Exporter's Sales Price*

For certain sales by Mitsubishi, we based United States price on exporter's sales price, in accordance with section 772(c) of the Act, since the sale to the first unrelated purchaser took place in the United States after importation.

**United States Price Calculations**

*Purchase Price*

We calculated purchase price based on the packed, c.i.f., duty paid and c.i.f. duty unpaid prices to unrelated purchasers in the United States. We made deductions from these prices for discounts. We also made deductions under the following section of the Commerce Regulations:

1. Section 353.10(d)(2)(i)

Where appropriate, we deducted foreign inland freight, brokerage and

handling charges, U.S duty, U.S. inland freight and insurance.

*Exporter's Sales Price*

For all exporter's sales price sales, the CPTs were imported into the United States by a related importer and incorporated into a color television (CTV) before being sold to the first unrelated party. Therefore, it was necessary to construct a selling price for the CPT from the sale of the CTV. To calculate exporter's slaes price we used the packed, c.i.f. duty paid prices of CTVs to unrelated purchasers in the United States. We made deductions for discounts. We also made additions or deductions under the following sections of the Commerce Regulations:

1. Section 353.10(d)(2)(i)

We made deductions for foreign inland freight, U.S. and foreign brokerage and handling charges, U.S. duty and U.S. inland freight.

2. Section 353.10(e)(1)

We made deductions for commissions paid to related sales representatives because they are treated the same as unrelated commissionaires.

3. Section 253.10(e)(2)

We made deductions for direct and indirect selling expenses incurred by or for the account of the exporter in selling CTVs in the United States. Since it is the CTV and not the CPT which is ultimately sold in the United States, a proportional amount of the CTV selling expenses were allocated to the CPT based on the ratio of CPT cost of production to the CTV cost of production. Therefore, we deducted general indirect selling expenses and direct selling expenses for credit costs, rebates and warranties. The total of the indirect selling expenses allocated to the CPT formed the cap for the allowable home market selling expenses offset under § 353.15(c).

4. Section 353.10(e)(3)

For exporter's sales price sales involving further manufacturing, we deducted all value added to the CPT in the United States. This value added consisted of the costs associated with the production of the CTV, other than the costs of the CPT, and a proportional amount of the profit or loss related to these production costs which did not include the selling expenses. Profit or loss was calculated by deducting from the sales price of the CTV all production and selling costs incurred by the company for the CTVs. The total profit or loss was then allocated proportionately to all components of costs. The profit or loss attributable only to the production costs, other than CPT costs, was considered to be part of the value added in the U.S. production.

In determining the costs incurred to produce the CTV, the Department included (1) the costs of production for each components, (2) movement, inventory carrying costs for each component, and packing expense, and (3) the cost of other materials, such as the cabinet, cables, fabrication, general expenses, including general and administrative expenses, general R&D expenses incurred on behalf of the CTV by the parent, and interest expenses attributable to the production of the CTV in the U.S. The weighted-average costs for each component were converted at the weighted-average exchange rate during that quarter. These aggregated quarterly costs were then matched to the sales prices of the CTV during that quarter to determine the profit or loss.

The Department found no basis, such as an extended period for production or an extended time between the receipt of the components in the U.S. and completion of the CTV, for lagging costs. Additionally, lagging exchange rates for components, including the CPT, could materially distort the determination since the U.S. price of the CPT would not be valued as the date of sale of the CTV.

In calculating the CPT and CTV costs, the Department relied primarily on the cost data provided by the respondent. In those instances where it appeared all costs were not included or were not appropriately quantified or valued in the response, certain adjustments were made.

To determine the company's financial expense incurred in the production of the CTV, the Department considered the various unusual aspects of the manufacturing process. Because the total process, including the manufacturing of the various components as well as the CTV, was global in nature, involving numerous companies around the world, the Department based the interest expense on the costs incurred by the consolidated corporate entity. Additionally, because this global process required the corporation to finance the costs of the components for an unusually lengthy period of time prior to the receipt by the U.S. manufacturer, the Department also included inventory carrying costs for those major components manufactured by related companies. To impute this expense, the Department used the simple average interest rate of the consolidated company's outstanding debt to calculate the carrying costs of these components prior to the completion of the production of the CTV. No inventory carrying costs were imputed for the CPT because the carrying time was not extensive prior to the completion of the CTV.

The interest expense was based on the consolidated corporate expense. The Department deducted interest income related to operations and a proportional amount of expenses attributed to accounts receivable and inventory since these costs were included in the cost of production for the final determination on a product specific basis. The interest expense was then applied as a percentage of the costs of manufacturing of each product.

For those major components manufactured by related companies (i.e., chassis and CPT), the Department used the costs incurred in producing such components and did not rely on the transfer prices of those components between related corporate entities when determining the CTV costs incurred by the consolidated corporation.

Royalty expenses incurred for production purposes were considered to be part of manufacturing, not selling expenses.

Since Mitsubishi did not include general and administrative expenses or general R&D incurred by the corporate headquarters for the production of the chassis and CPT, the Department allocated a portion of these expenses to the CPT, chassis and other manufacturing costs incurred in the U.S. Furthermore, the Department allocated a proportional amount of consolidated interest expense to each company.

For the CPT, the company provided corrections of clerical errors. The company revised its variable factory overhead, direct labor, and indirect labor per tube expenses. The Department revised semi-variable overhead, depreciation, taxes and security, and development expenses because the company reduced the cost by applying a capacity utilization factor which did not fully absorb all costs. Furthermore, the Department adjusted the depreciation expenses to capture amortization of license payments made by the company which were not included. Material costs were adjusted for two items pertaining to the 19-inch tube: freight, which was not included on the 19-inch gun, and phosphorus usage, which could not be supported during verification. Finally, the Department increased the 26-inch panel cost imported from Japan to reflect certain reallocations of factory overhead. This adjustment applied only to the fourth quarter cost of the 26-inch panel.

For the chassis, the Department did not allow a credit claimed for payroll taxes incurred in prior years to offset current year labor costs. Electricity and certain indirect expenses were also reallocated to reflect the nature of the production process. Finally, the Department increased Mitsubishi's cost of manufacturing for the chassis because it was originally based on internal corporate documents, which at verification did not reconcile with the financial statements.

For the other manufacturing processes incurred for the CTV, the Department excluded from production costs certain warehouse expenses which were considered to be part of selling expenses. In addition, inventory carrying costs were calculated for the chassis.

**Foreign Market Calculations**

In accordance with section 773(a) of the Act, we calculated foreign market value based on delivered, packed, home market prices to unrelated purchasers. We did not include sales to related purchasers, pursuant to 19 CFR 353.22(b), since those purchases were determined to be at prices which were not comparable to those at which such or similar merchandise was sold to persons unrelated to the seller. We made deductions, where appropriate, for inland freight and insurance. We subtracted home market packing and added U.S. packing to home market prices.

Where U.S. price was based on purchase price sales, we made adjustments to foreign market value under the following sections of the Commerce Regulations:

1. Section 353.15(a), (b)

Circumstances of sale adjustments were made for differences in credit expenses, warranties, and technical service expenses.

2. Section 353.16

Where there was no identical product in the home market with which to compare a product sold to the United States, we made adjustments to the price of similar merchandise to account for differences in the physical characteristics of the merchandise. These adjustments were based on differences in the costs of materials, direct labor, and directly-related factory overhead.

Where U.S. price was based on exporter's sales price we made deductions from the prices used to calculate foreign market value under the following sections of the Commerce Regulations:

1. Section 353.15(c)

We deducted indirect selling expenses and direct selling expenses for credit costs, technical service expenses and warranties incurred by or for the account of the respondent in selling the CPTs in the home market. The amount of indirect expenses deducted for each respondent was limited to the total indirect expenses incurred for CPT sales in the United States. Total indirect CPT expenses, as noted in the "U.S. Price Calculation" section of the notice, were derived by allocating to CPTs a proportional amount of CTV selling expenses.

2. Section 353.16

Where there was no identical product in the home market with which to compare a product sold to the United States, we made adjustments to the price of similar merchandise to account for differences in the physical characteristics of the merchandise. These adjustments were based on differences in the costs of materials, direct labor and directly related factory overhead.

**Currency Conversion**

For comparisons involving exporter's sales price transactions, we used the official exchange rate on the dates of sale since the use of that exchange rate is consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the later law supersedes that section of the regulations. For comparisons involving purchase price transactions we made currency conversions in accordance with § 353.56(a)(1) of our regulations. All currency conversions were made at the exchange rates certified by the Federal Reserve Bank.

**Verification**

As provided in section 776(a) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures including examination of all relevant accounting records and original source documents provided by the respondent.

**Interested Party Comments**

*Comment 1:* Petitioners argue that CPTs which are imported as part of kits or incomplete CTVs should be included within the scope of the investigation. They argue that the Customs classification of these CPTs as "incomplete television receivers" or "kits" under TSUSA items 684.9655–684.9663, which are dutiable at a rate of five percent, does not necessitate their exclusion from a CPT order. They cite *Diversified Products Corp.* V. *U.S.*, 572 F. Supp. 883, 887 (CIT 1983) as a precedent which allows the Department to modify Customs classification in its determination of class or kind of merchandise.

Mitsubishi contends that since it does not ship kits or assemblies into the U.S. either directly or through third countries, this is not an issue in this investigation.

*DOC Position:* We agree in part with petitioners. See the "Scope of Investigation" section of this notice.

*Comment 2:* Petitioners argue that CPTs sold to related parties which are subsequently incorporated into CTVs before they are sold to unrelated customers are properly included within the scope of the investigation. They cite section 772(e) of the Act as giving the Department authority to include merchandise which is further manufactured within the scope.

*DOC Position:* Section 772(e)(3) of the Act gives the Department authority to make adjustments to exporter's sales price where the imported merchandise under investigation is subject to additional manufacturing or assembly by a related party. In this instance, CPTs are imported from Canada by related parties where they are further assembled into CTVs before being sold to the first unrelated party. Therefore, in order to determine the U.S. price of the CPT, we properly deducted the value added to the CPT after importation.

See the "U.S. Price Calculation" section above for a discussion of the methodology used.

*Comment 3:* Petitioners argue that in its preliminary determination the Department erred by failing to impute the inventory carrying cost associated with obtaining CTV components from related suppliers in calculating the cost of manufacture for CTVs. Petitioners maintain that the inventory carrying cost of the CTV components should be based on the time-in-inventory at the related suppliers' premises and the time-in-transit to the CTV production line in the United States.

Respondent argues that the Department should not impute a cost for the time components spend in inventory and transit before CTV production. Moreover, respondent contends that the Department should not make such an extensive policy change after a preliminary determination when that change was not anticipated in the preliminary.

*DOC Position:* We agree with petitioners. We have imputed inventory carrying costs based on the time the

company financed such costs prior to the date of sale of the CTV. We have included those costs in calculating the cost of manufacture of the CTV. We disagree with the respondent's position that we should not make such changes after the preliminary determination. One purpose of a preliminary determination is to set forth the methodology the Department believes is appropriate. The methodology, like other elements of a preliminary, can be changed for the final determination if the result is more accurate. The change we have adopted was proposed by petitioners and respondent has had ample opportunity to present arguments against it.

*Comment 4:* Petitioners state that the inventory carryng costs incurred for CPTs prior to the time that they are incorporated into a CTV are CTV production costs rather than CPT costs. Respondent argues that these costs should be considered CPT costs.

*DOC Position:* We agree with the respondent. Those inventory carrying costs related to components which were added during the production of the CPT were considered as part of the value added in the U.S. because such costs were an integral part of the components.

*Comment 5:* The petitioners argue that the Department's exclusion of certain CTV models on the grounds that the models were no longer being produced or the amounts being sole were negligible is arbitrary and not in accordance with the Law. In particular, they claim the Department did not use a "generally recognized" sampling technique. The respondent contends that the CTV models selected by the Department represented nearly all the sales made during the period of investigation.

*DOC Position:* We disagree with petitioners. There is no requirement that the Department examine all exporters or sales. The Department's regulations merely require that we examine at least 60 percent of the imports in question, 19 CFR 353.38, and we have done so in this proceeding. In this investigation, Mitsubishi represented all imports of CPTs from Canada. We investigated approximately 95 percent of the sales of this company. Furthermore, we verified the total sales of this company in all markets as well as the quantity of CPTS incorporated into the model we chose to investigate. Because we found no discrepancies in these figures, we are satisfied that the remainder of the sales not verified encompassed those models which has relatively few sales, were out of production, or were reported as replacement parts. Also, we do not view our decision allowing the respondent not to report a few sales as sampling. We disregarded these sales for reasons of administrative convenience, having concluded that these few sales would not add to the accuracy of our analysis.

*Comment 6:* The petitioners allege that the Department erred in its methodology of computing the exporter's sales price offset cap. They contend that we should not calculate an offset cap for CPTs from the CTV indirect selling expenses because selling expenses for CTVs will always be higher than those for CPTs. Rather, we should use indirect expenses of selling CPTs in the U.S. market to the related CTV producer for our exporter's sales price offset cap.

*DOC Position:* We disagree. Since it is CTVs and not CPTs which are ultimately sold in the U.S. and all selling expenses occur at the time of the CTV sale, we have prorated the selling expenses of CTVs to reflect the share of selling expenses attributable to CPTs for the purposes of creating an exporters' sales price offset cap. We view this methodology as more equitable and accurate than that proposed by petitioners. Petitioners' methodology would not be accurate because all respondents sold CPTs to related companies in the U.S. and the indirect selling expense incurred on such sales would not be representative of such expenses had the sales been to unrelated parties.

*Comment 7:* Petitioners argue that the methodology used by the Department to determine U.S. price for imports of CPTs by related parties is statutorily mandated under the value added provisions of section 772(e)(3) of the Act and is supported by Department Regulations and practice. However, the Department should not add profit to the CPT in those limited situations where there is evidence that the CPT is being transferred at prices its cost of production or where the respondent's entire CPT operation is unprofitable. In such instances, the profit accrues to the CTV and not the CPT.

Respondent argues that profit should be allocated using actual costs according to the ration of CPT production costs to total production costs.

*DOC Position:* We agree with respondent. It has been our longstanding practice to deduce the profit (or loss) associated with U.S. value added when the related party in the United States performs further manufacturing on the imported product.

We do not agree with the petitioners that the adjustment should be limited to those situations where the transfer price exceeds the cost of producing the CPT or where the CPT operation is profitable. The profitability of the "sale" of the CPT to the related importer derives directly from the profitability of the sale of the CTV because this is the first sale to an unrelated customer. Whether the transfer price for the CPT is less than or exceeds the cost of producing the CPT does not affect that profitability.

*Commment 8:* Respondent argues that the Department should not add any profit attributable to CTV selling expenses to the value added since section 772(e)(3) limits the application of increased value to the process of manufacture or assembly performed on the imported merchandise.

Petitioners argue that profit arising from selling expenses is properly a part of value added because the amount of profit earned on the sale of a CTV is directly affected by the cost to make it and the cost to sell it.

*DOC Position:* We agree with the respondent that section 772(e)(3) of the statute limits the value added deduction from U.S. price to any increased value including additional material and labor resulting from the process of manufacturing or assembly. Material and labor were specifically identified as elements of increased value. Not only were selling expenses not contemplated as elements of increased value, they were specifically provided for in section 772(e)(2) which calls for the deduction of expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise. Therefore, we did not include in the value added to the CPT in the U.S. any profit attributable to CTV selling expenses.

*Comment 9:* Petitioners state that Mitsubishi failed to report model specific warranty expense on CTVs, and Mitsubishi's methodology of allocating across products under investigation distorts the actual costs incurred in the products under investigation. The Department should require that Mitsubishi provide specific warranty costs for each CTV model subject to investigation. Petitioners further argue that the Department should revise its preliminary determination calculations and deduct the CTV warranty cost as a direct selling expense in the value added analysis.

The respondent contends that the Department should subtract only CPT warranty costs from the U.S. sales price instead of CTV warranty costs because (1) these expenses are incurred on a component specific basis; (2) Mitsubishi Sales America, Inc.'s (MESA) records provided component-by-component costs; and (3) the subject matter of this

investigation involves a specific CTV component.

*DOC Position:* We generally agree with the petitioners. However, MESA does not maintain separate model-by-model warranty costs in its data base and therefore cannot provide model-by-model CTV warranty expenses. As described elsewhere in the notice, the Department has taken all selling costs associated with the CTV and allocated them proportionately to the CPT and other components. Warranty expenses have been included among these selling expenses. We are not persuaded that allocating specific selling expenses to specific components is feasible or that it would enhance the accuracy of our results.

*Comment 10:* Mitsubishi states that certain of MESA's credits should not be disallowed as intracompany transfers. It notes that these MESA credits are included as debits on MCEA's books and have been included as part of MCEA'S overhead expense. However, if the credits are disallowed, then MCEA's overhead expenses should be reduced as an offset in an amount equal to these disallowed credits.

*DOC Position:* We agree with the respondent and have reduced the overhead expenses in an amount equal to these intracompany transfers.

*Comment 11:* Petitioners argue that physical difference in merchandise adjustments should be applied on a model-by-model basis as opposed to calculating an average foreign market value.

*DOC Position:* We applied difference in merchandise adjustments for each specific model when comparing it to the U.S. model. The resulting difference in merchandise adjustment was, therefore, calculated on a model-by-model basis.

*Comment 12*: Petitioners claim that a monthly foreign market value should be calculated as opposed to a foreign market value covering the entire period of investigation. Petitioners state that CPT prices on home market models declined sharply during the period of investigation and in the past the Department has correctly used a monthly weighted-average foreign market value in such circumstances.

*DOC Position*: We disagree with petitioners. We see no evidence of sharp price declines in Canada during the period of investigation and, therefore, no need to calculate a monthly foreign market value.

*Comment 13*: Petitioners claim Mitsubishi's method of offsetting sales made during the period of investigation with returns made during the period of investigation may understate dumping margins. Petitioners argue that respondent can select which customers' sales will be reduced by returns and consequently assign returns to customers that are provided with the largest number of sales inducements and rebates. Petitioners suggest that the Department require Mitsubishi to submit a listing of sales excluded using its methodology, including customer numbers.

*DOC Position*: We disagree with petitioners. A relatively small number of all sales during the period of investigation had corresponding returns. A significant number of these returns could be matched directly as to customer, model number and price to a single invoice. The remaining sales were matched to sales based on model number and gross sales price; only the customer was different. While gross sales prices were used instead of net prices, Mitsubishi's computer program selected the sale nearest in time before the return was made as the one to be discarded. Therefore, respondent's methodology appears to be an objective and reasonable way of matching these credit returns. While Mitsubishi compared prices on a gross invoice basis, these returns were relatively so small in number that we have determined that they will not affect the margin calculation.

*Comment 14*: Petitioners allege that Mitsubishi has large differences in its credit costs due to the existence of service fees paid to and by flooring companies and differing payment periods for certain classes of customers. Therefore, it should not be allowed to average these costs by submitting an average accounts receivable turnover rate for calculating the number of days that payment is outstanding. Mitsubishi argues that its records do not track shipment date to payment date on a sale-by-sale basis. Mitsubishi asserts that the approach utilized by MESA was the most accurate.

*DOC Position*: We generally agree with the petitioners. However, the respondent did not maintain its records in a manner whereby precise credit costs and flooring expenses could be determined on a sale-by-sale basis. Therefore, we deducted an average amount for these costs and treated both credit costs and flooring expenses as direct selling expenses.

*Comment 15*: Petitioners allege that Mitsubishi understated its CTV packing expenses. Petitioners claim that the Department should adjust Mitsubishi's packing costs to reflect actual costs incurred and ensure that the standards accurately reflect the labor time in the current period.

*DOC Position*: This expense has been revised and verified and will be used in the final analysis.

*Comment 16*: Mitsubishi states that it treated all general expenses appropriately, and that G&A expenses of headquarters were allocated to subsidiaries in fair amounts and need not be increased. The petitioners argue that the expenses incurred by Mitsubishi must be allocated to subsidiary operations because they were incurred on behalf of these operations.

*DOC Position*: The Department attributed general and administrative expenses related to the headquarter operations to all companies. Since the respondent had not provided an amount for such expenses, the Department used, as best information, adjusted information from the consolidated financial statements.

*Comment 17:* Petitioners claim that the respondent misallocated G&A expenses by using arbitrarily determined standard times for the G&A at the plant manufacturing the CTV. Mitsubishi states that these expenses were allocated to product groups by cost of sales, not standard times.

*DOC Position:* The respondent used cost of sales to allocate the general and administrative costs between projection televisions (PTV) and CTV production. The general and administrative costs were then allocated to individual products based on standard times. The Department verified the allocation of general and administrative costs and concluded that respondent's method was not distortive.

*Comment 18:* Petitioners claim that United Electronic Engineering Corp. Pte. Ltd.'s (UEEC) financial expense claims are understated. Petitioners suggest that if the Department cannot determine the actual financial expenses of UEEC attributable to CTV chassis, the Department should use the greater of the financial expenses from the monthly profit and loss statements or the audited financial statements and allocate the expenses using the respective costs of goods sold. Also, petitioners claim that no deduction to financial expense for financial revenues should be made.

*DOC Position:* The Department used the consolidated financial expenses of the corporation in determining the financial expense to be attributed to each entity in the corporation. Any financial income from operation was ued to offset the interest expense. This expense was allocated on the basis of cost of goods sold.

*Comment 19:* Petitioners claim Mitsubishi miscalculated G&A expenses attributable to the cost of producing the

CPT by including taxes which do not relate to the cost of production. Petitioners argue the Department should deduct the business tax from G&A expenses attributable to the cost of production for CPTs.

*DOC Position:* The Department excluded the business tax, which was similar to an income tax, from its calculation of general and administrative expenses.

*Comment 20:* Mitsubishi claims that four Kyoto Works groups were devoted solely to CPT production activities and the indirect costs incurred by these groups should not be allocated over all products at Kyoto Works. The CPT production group also manufactured the 26" panel which was transferred to Canada for us in the 26" CTV.

Petitioners claim that these expenses should be reallocated to all products manufactured by Kyoto Works, using total actual labor hours or the cost of goods sold of the respective products to distribute expenses between product lines and among products.

*DOC Position:* Review of verification exhibits subsequent to verification revealed that these four groups were part of the CPT operation and that their costs should be attributed solely and entirely to CPT products including the 26" panel, and not allocated over all products at the Kyoto works. No adjustment was made.

*Comment 21:* Mitsubishi states that there were no write-offs of printed circuit boards ("PCB") inventory used to produce chassis for CTVs either during 1986 or in the year-end adjustments. Petitioners claim that since CTV models are constantly being introduced into the marketplace or updated, write-offs for inventory obsolescence of PCBs should be significant.

*DOC Position:* The Department has analyzed the documentation received during verification and determined that there was no indication of write-offs for PCB inventory and that none was taken. Therefore, the Department has not made any adjustment for obsolescence.

*Comment 22:* Mitsubishi states that the energy expenses were appropriately allocated in the submission between CTV chassis and other products manufactured in that plant.

Petitioners claim respondent understated the actual energy expenses attributable to chassis production costs and that the Department should recalculate common energy expenses based on the space allocation percentages.

*DOC Position:* The Department reviewed the allocation of common energy expenses and found no basis or support for the respondent's methodology.

Therefore, the Department reallocated the common energy costs based on production floor space used for the CTV chassis and other products manufactured in the plant.

*Comment 23:* Mitsubishi claims that UEEC was not subject to a payroll tax in 1986 due to the abolition of this tax in 1985 by the Singapore Government. Petitioners argue the Mitsubishi's chassis labor costs were understated since UEEC failed to account for the full amount of a payroll tax in its labor cost calculations. Petitioners state that the Department should recalculate labor costs to reflect this direct labor cost.

*DOC Position:* The Department examined documents during verification and determined that the credit for the payroll tax should not be included in the cost. The Department accordingly made the adjustment to eliminate the credit for payroll tax since credits related to prior expenses should not offset current costs.

*Comment 24:* Mitsubishi changed allocation methods for certain overhead items between the third and fourth quarter of 1986. The company changed the overhead allocation when it transferred car audio production from Kyoto Works to Sanda Works.

*DOC Position:* The Department reviewed and adjusted the fourth quarter allocation. As a result, these costs were adjusted to reflect the third quarter's allocation basis.

*Comment 25:* Petitioners claim that Mitsubishi's U.S. labor costs on CTVs were understated due to a borrowing of personnel and that respondent did not provide revised labor cost figures to account for this additional labor cost.

Mitsubishi claims that the transfers of personnel between the CTV and PTV buildings was insignificant during 1986. Also, the transfers were roughly equal between the two plants, so the absolute levels offset with no net effect. Therefore, no change is required in the labor cost for CTV assembly.

*DOC Position:* Labor was transferred between both production areas. The Department concluded, however, that the effect of the transfer of employees between the departments was minimal. Thus, no adjustment was made.

*Comment 26:* Mitsubishi contends that the cost of sales from the internal records and the audited financial statement are reconcilable and the reconciliation is provided in verification Exhibit #48. Petitioners claim that these internal financial statements formed the basis of the cost submission and that the discrepancy between the internal records and the audited financial statements should be allocated strictly to the cost of producing chassis used in producing CTVs under investigation.

*DOC Position:* The verification exhibit referred to by the respondent is the financial statement of the company, which does not provide a reconciliation. Therefore, the Department attributed a proportional amount of this difference between the audited financial statements and the internal financial statements to CTV chassis production.

*Comment 27:* Petitioners claim that Mitsubishi's choice of standard times for allocation bases was inconsistent and arbitrary and resulted in cost understatements. Petitioners suggest that the Department should recalculate these expenses based on actual labor hours.

Mitsubishi states that the standard times used were always selected on a production lot basis and that this method does not underallocate expenses to CTVs that contain Canadian or Japanese tubes.

*DOC Position:* The Department reviewed the standard times presented at verification. In cases when standard times were selected from outside the period of investigation they appeared to be reasonable when compared to those within the period of investigation. Therefore, we accepted Mitsubishi's allocation.

*Comment 28:* Petitioners state that costs submitted by Mitsubishi may not have reflected the costs incurred by related trading companies. Petitioners suggest that the Department should calculate the full cost incurred by Mitsubishi Sales Singapore Pte. Ltd. (MSS) in procuring materials for UEEC and trading finished chassis to Mitsubishi Consumer Electronics of America, Inc. (MCEA) from UEEC.

Mitsubishi argues that it submitted costs which overstate the expenses of MSS. Since the chassis go to MCEA, selling expenses are minimal according to Mitsubishi and the commission exceeds the expenses incurred by MSS.

*DOC Position:* The Department has captured the costs incurred by MSS for chassis as a general and administrative expense.

*Comment 29:* Petitioners argue that respondent failed to limit its fabrication costs to the period of investigation. Petitioners suggest the Department should recalculate actual fabrication costs strictly for each quarter in the period of investigation and allocate these costs based on the actual labor time per model in production, rejecting Mitsubishi's annualized figures.

Mitsubishi contends that the annualized fabrication rate was

appropriate because CTV production is somewhat seasonal and thus quarterly fabrication costs fluctuate widely. Moreover, the company is on the cash basis and adjustments to quarterly data would have been excessive, while accruals would be more properly reflected over an entire year. Finally, the price of the CTV was based on the total annual costs.

*DOC Position:* In this case, the Department concluded that the annualized fabrication rate did not distort the fabrication cost incurred for the production of the CTV. Therefore, we did not adjust the respondent's submission.

*Comment 30:* Mitsubishi claims that the electricity expenses for CTVs should be lowered in the final value added calculation. The two production buildings were metered separately for electricity. However, when preparing the response Mitsubishi allocated the total pool of overhead expenses based on standard times. As a result, CTV production received roughly 70 percent of the expenses rather than the 50 percent it should have received.

*DOC Position:* The Department disagrees that an adjustment should be made. The company did not present this adjustment nor relevant decumentation during verification. The Department cannot accept unverified information as a basis for its final determination. Therefore, since the Department was not able to verify it we did not use it in our final determination.

*Comment 31:* Mitusbishi claims that automatic insertion expenses were overallocated to CTV chassis in its response and, therefore, the Department should adjust the CTV chassis cost.

*DOC Position:* The respondent could not support its contention that automatic insertion costs were over-allocated to chassis. Therefore, we did not make an adjustment.

*Comment 32:* Petitioners claim Mitsubishi failed to provide the weighted-average cost incurred for the production of chassis used in CTVs. Petitioners state that the costs and existence of the chassis production facilities at Woodlands and Kyoto were not reported in Mitsubushi's submissions and Mitsubishi refused to provide such information. Petitioners argue that the Department should use the best information available, the cost of production of the highest-cost Japanese producer of a comparably-sized chassis.

Mitsubishi claims that the issue of chassis costs for its Woodlands and Kyoto facilities was first raised at verification. Mitsubishi did not not report these costs because it did not consider them to be relevant. Production from these plants is not commingled with production from the Bukit Timah chassis plant which produces chassis shipped to the U.S. Mitsubishi claims that it did not attempt to hide these production facilities, which the Department has known about for years. Instead, it did not believe it necessary to use anything other than the Bukit Timah costs.

*DOC Position:* The Department's analysis of the cost for the Bukit Timah facility indicates that the costs provided are representatives of the weighted-average costs of producing chassis.

*Comment 33:* Mitsubishi claims that MCEA slightly overstated its finance expenses in the value added submission due to the fact that finance expenses for 1986 were calculated on an annual basis and included interest paid prior to the period of investigation. Mitsubishi contends that this payment should be excluded under the Department's usual policy of including only interest payments actually paid out during the period of investigation.

*DOC Position:* The Department used the consolidated interest expenses as a basis for determining interest expense. The Department was not presented with an adjustment during verification nor was any documentation provided during verification. Therefore, no adjustment has been made.

*Comment 34:* Mitsubishi argues that it is inappropriate to use the consolidated interest expenses for the U.S. subsidiaries. The subsidiaries. The subsidiaries are responsible for their own financing and to use an interest expense determined by the consolidated entity would be inconsistent between cases.

*Doc Position:* The Department used a proportional amount of the consolidated financial expense to determine the financial expense for each entity within the corporation. Funds from debt are fungible and the final decision regarding the amount of equity in any one entity is ultimately a result of the parent company's decisions.

*Comment 35:* Petitioners state that Mitsubishi's method of calculating material cost may have led to an understatement of cost due to MCEA's failure to provide weighted-average, fully-absorbed material costs using a first-in, first-out inventory method. Mitsubishi states that it used average costs, not middle lots, for material costs.

*DOC Position:* The Department reviewed the middle lots used for each quarters' costs on which the submissions were based and also for lots before and after this middle lot. The Department found the costs in the submission to be representative of actual costs.

*Comment 36:* Petitioners claim that Mitsubishi's interest expenses in the U.S. were understated and misallocated. Petitioners argue that the cost of financing was based on the terms between related parties and not on the actual cost of funds to the related lender. Also, petitioners claim that Mitsubishi incorrectly calculated net interest expense, did not itemize interest income and expenses, and did not show that the interest income was earned in production or sale of CTVs. Also, interest expense was allocated based on cost of sales which included the transfer prices of materials from related parties. Using transfer prices in the allocation of expenses may have understated the actual interest costs attributable to the cost of producting CTVs, according to petitioners.

Mitsubishi argues that interest expenses were correctly allocated to the product. The interest expenses were allocated based on cost of sales. The cost of sales used was based on transfer prices rather than cost of production. This assured that interest expenses were properly allocated to the product.

*DOC Position:* The interest expense incurred by MCEA was not used since the Department applied the interest expenses of the consolidated company.

*Comment 37:* Petitioners claim that respondent's allocation methods have led to an understatement of the cost of producing chassis. Petitioners suggest that the Department should recalculate and allocate indirect department costs, G&A expenses and fabrication costs based on the cost of goods sold and actual direct labor hours.

*DOC Position:* The Department has reallocated such expenses based on the cost of sales as opposed to value of sales. Sales values of different products would include varying amounts of profit or loss and could distort the allocation.

*Comment 38:* Petitioners claim Mitsubishi understated the cost of material control attributable to CTV chassis production. Petitioners urge the Department to recalculate these costs.

*DOC Position:* The Department made an adjustment to the cost of producing chassis to reflect the proper allocation of material control costs. This adjustment was based on verified data regarding the use of store room space.

*Comment 39:* Petitioners claim Mitsubishi miscalculated CPT material costs by not accounting for all supplier rebates. Petitioners suggest that the Department recalculate materials costs, accounting for the full amount of the

actual rebates provided on a per part basis.

*DOC Position:* The cost of production includes material costs incurred during the period of investigation. The rebates were spread over the costs of the material imputs. Therefore, there is no distortion of material costs for the product.

*Comment 40:* Petitioners claim Mitsubishi substantially understated its UEEC chassis production costs because UEEC accounted for its material costs based on acquisition costs and not inventory values.

*DOC Position:* The Department verified materials costs and analyzed the changes in materials costs between quarters. There was no substantial change in materials costs between periods and, therefore, no adjustment in materials costs was considered necessary.

*Comment 41:* Mitsubishi asserts that it correctly reported volume rebates based on average overall sales instead of on a sale-by-sale basis.

*DOC Position:* We disagree. Respondent has revised its response in order to present this expense on a customer-by-customer basis, and we have used that data.

*Comment 42:* Mitsubishi notes that the Department's sample margin calculation, with regard to CTV packing, did not agree with the methodology in the computer program used. It suggests that the computer program was wrong and should be corrected.

*DOC Position:* The computer program was changed for the final determination. CTV packing is now in other costs.

*Comment 43:* The petitioners argue that the Department should exclude those home market sales which were priced below the fully absorbed cost of production in its price comparisons.

*DOC Position:* We agree in part with the petitioners. In calculating the value added to the CPT in the United States, we obtained cost data only for those CPT models sold in the home market which were identical to those sold in the U.S. The sales of identical merchandise in the home market were made to related parties. We compared the cost data for identical merchandise to the related parties prices and determined that they were not at arm's length because they were below the cost of production. We then used higher priced sales to unrelated parties in the home market for our comparisons. However, there is no cost data in the record which would allow us to determine whether these unrelated party sales were made at or above fully absorbed cost of production.

*Comment 44:* The petitioners allege that Mitsubishi incorrectly claimed visits to home markets customers as a direct expense when, in fact, they are part of a general sales effort and are not connected with particular sales. The respondent contends these expenses are more properly viewed as direct rather than indirect expenses since they are directly tied to the sale of specific models. The respondent states, however, that if these expenses are viewed as indirect, they shold be reclassified with respect to purchase price sales as well as home market sales.

*DOC Position:* We agree with the petitioners. We generally view visits to customers for the purpose of making future sales as an indirect selling expense and have treated them as such.

*Comment 45:* The petitioners assert that Mitsubishi's quality assurance expenses should be calculated on a model-by-model basis because the stated purpose is to review tube line rejects for each model. The respondent asserts that MEICA's quality assurance trips were for the purpose of reviewing all CPT problems associated with particular customers, and the focus of these trips was on the customer, and not a specific model. Therefore, according to the respondent, the proper method of calculating this expense is on a customer-by-customer basis.

*DOC Position:* We agree with the respondent. The purpose of the trips was to assist each customer with its problems concerning all the tubes purchased from Mitsubishi. Moreover, we do not have the data showing how much time was spent troubleshooting for specific models.

*Comment 46:* The petitioners contend that fixed costs should not be included in the calculation of differences in merchandise, and that the Department should recalculate the adjustment for differences in merchandise so that it includes only those costs that vary due to actual physical differences in the merchandise.

*DOC Position:* We agree with the petitioners and have adjusted the data for differences in the merchandise accordingly.

*Comment 47:* The petitioners allege that the U.S. duty expense reported by Mitsubishi is grossly understated, and the Department should revise its calculations to reflect the 15 percent ad valorem duty rate that applies to imports of CTV tubes. Mitsubishi asserts they presented extensive evidence of duty expenses for purchase price and ESP sales made through both Detroit and Buffalo, and the supporting evidence was extensively examined and verified.

*DOC Position:* We agree with the respondent. We have used the data submitted by the respondent which accurately reflects the duty paid.

*Comment 48:* The petitioners allege that Mitsubishi overstated net price on certain U.S. sales because it averaged the charges for U.S. duties, brokerage and inland freight, even though these charges may vary greatly, and that actual charges must be submitted for each U.S. sale. Mitsubishi asserts that they cannot report these expenses on a sale-by-sale basis. Therefore, they properly averaged these expenses for purchase price sales on a model-by-model basis.

*DOC Position:* We agree with the respondent. Mitsubishi does not maintain its records for these charges on an individual sale basis. Therefore, it correctly reported these costs on a model-by-model basis.

*Comment 49:* The petitioners assert that Mitsubishi understated its advertising costs by averaging them over an entire year instead of using actual costs for the period of investigation. Mitsubishi asserts advertising expense are often planned and incurred on an annual basis.

*DOC Position:* We disagree with the petitioners. We took an average year cost because certain advertising costs which were incurred during the period but were paid outside of the period, artificially lowered the cost reported in the period of investigation.

*Comment 50:* The petitioners state that Mitsubishi incorrectly calculated its U.S. inland freight and freight-out expenses. Instead of allocating these expenses on the basis of sales value, the petitioners assert that they should be allocated on the basis of total volume or weight shipped. Mitsubishi asserts that MESA calculated the freight expense ratio based on total audio video sale revenue, and this method was the most representative. It was impossible for Mitsubishi to allocate this expense based on volume or weight shipped because the product mix of each shipment varied and Mitsubishi did not maintain its records in this manner.

*DOC Position:* While we generally agree with the petitioners, the respondent's records were not maintained in a manner whereby freight costs were based on volume or weight. Therefore, we used the next best available methodology which was based on sales value.

*Comment 51:* Petitioners contend that Mitsubishi's average U.S. borrowing rate and interest expenses were understated because it reported all short-term loans which matured during the period of

investigation instead of all those outstanding during the period. Furthermore, it adjusted the yen-denominated loans to account for foreign currency exchange gains and losses. Finally, yen loans from related parties should not be included because they are not at arm's length. Mitsubishi asserts MESA's rate is lower due to the fact that MESA seeks loans in various currencies to obtain the lowest rate. It also contends that all loans, no matter what the currency, should be used.

*DOC Position:* We agree with the petitioners. It is our standard practice to look at all loans outstanding during the period of investigation. We used the revised verified loan data provided by the respondent, which includes all loans outstanding during the period of investigation. We have only used loans denominated in U.S. dollars because most of the loans were denominated in that currency. This is in accord with our general practice of not combining interest rates across currencies and using that average interest rate in the currency in which there was the largest volume of loans.

*Comment 52:* Petitioners assert that Mitsubishi's claimed direct U.S. selling expenses were part of its exporter's sales price offset cap, and if these expenses, advertising and promotion, were model- or product-specific, then they should be considered as direct U.S. selling expenses and excluded from the exporter's sales price offset cap. Mitsubishi aserts that these expenses relate to MESA sales in general and should be considered as indirect expenses.

*DOC Position:* We partially agree with the petitioners. Those selling expenses which related to specific U.S. sales were taken out of indirect expenses and, therefore, not included in the ESP offset cap.

*Comment 53:* Mitsubishi states that patent fees were reported based on actual payments to outside parties. Only that portion paid to the outside license holders was reported, and this method correctly ignores intra-corporate transfers. The petitioners argue that the Department should include all costs incurred by or on behalf of MEICA in its calculation of production cost.

*DOC Position:* The portion of the patent fee paid to unrelated companies is the only portion of the patent fee included in the cost of production. Additional services provided by MEICA related to the patent were captured in the G&A expenses of the parent company which was included in the cost of production of the CPT.

*Comment 54:* Mitsubishi asserts that it correctly made a capacity adjustment to certain costs because the factory was operating at well under full capacity for much of the year. The petitioners argue that adjusting expenses based on capacity utilization rates will always lead to a reduction in cost of production per unit and these adjustments should not be allowed.

*DOC Position:* The Department requires fully absorbed costs to be included in the cost of production. Applying a capacity adjustment to the costs resulted in less than full costs being included in the cost of production. Therefore, the Department disallowed the capacity utilization adjustment.

*Comment 55:* Mitsubishi contends that it identified those portions of its total interest expenses that were appropriately considered operating interest expenses. The petitioners argue that the allocation of interest expense to stockholder's deficit is invalid and the entire amount of the actual interest expense incurred by MEICA during the period should be considered as an operating expense.

*DOC Position:* As noted above, a proportional amount of the interest expense incurred by the consolidated corporation was allocated to each entity. Therefore, this issue is moot.

*Comment 56:* Mitsubishi contends that it correctly omitted expenses for personnel on loans to MEICA from MELCO. The petitioners do not agree. Absent these assists, MEICA would have been required to hire additional employees.

*DOC Position:* The Department has captured such costs when it included the parent company's general and administrative expense.

*Comment 57:* Mitsubishi asserts that red phosphorous costs were correctly reported, even though the Department contends that the usage rate was not verified.

*DOC Position:* The company could not provide supporting documentation for usage. Therefore, the Department adjusted this phosphorous usage to be comparable to the other colors of phosphorous.

*Comment 58:* Mitsubishi argues that it appropriately allocated indirect department and G&A expenses on the relative sales value of UEEC's products. Mitsubishi did so because this methodology did not introduce any distortions and costs of sales on a product-line basis is not available. The petitioners assert that the fact that UEEC failed to calculate its cost of sales by product line is not a basis for using inherently unreliable transfer prices to allocate costs.

*DOC Position:* Sales values include different profit/loss margins on varied products. Therefore, the indirect costs were allocated on the basis of costs of sales.

*Comment 59:* Mitsubishi asserts that it correctly determined the cost of storeroom space based on the number of people working in their respective areas of the storeroom. The petitioners assert that the manpower used is not a satisfactory allocation base when various products are housed in a common storeroom.

*DOC Position:* The Department has analyzed the allocation of storeroom costs and determined that the allocation was not an appropriate measure of costs because the number of employees could be altered daily. The Department has reallocated the storeroom costs on the basis of space.

*Comment 60:* Mitsubishi argues that it treated all related party transactions such as purchase of materials, parts and equipment, and payments of royalties correctly and that no modifications are necessary due to their related party status. The petitioners assert that the Department must include in the cost of production any assumption of financing expenses, provision of personnel to set up and monitor operations, technical assistance and provision new material or capital equipment at less than cost.

*DOC Position:* We agree with the petitioners. For major parts obtained from a related company the Department used the actual costs which were reported by the respondent and made adjustments when necessary. For financial expenses, the Department used the consolidated interest expense as described under the "United States Price Calculations" section of the notice. For the other expertise provided by the parent, the Department captured such expenses in the general administrative expenses allocated from the parent

**Continuation of Suspension of Liquidation**

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of CPTs from Canada that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-averaged margins are as follows:

| Manufacturer/producer/exporter | Weighted-average margin percentage |
|---|---|
| Mitsubishi Electronics Industries Canada, Inc. | .65 |
| All others | .65 |

## ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on CPTs from Canada entered, or withdrawn from warehouse, for consumption after the suspension of liqudiation equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

**Gilbert B. Kaplin,**

*Acting Assistant Secretary for Import Administration.*

November 12, 1987.

[FR Doc. 87-26589 Filed 11-17-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-609]

# Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Japan

**ACTION:** Notice.

**SUMMARY:** We have determined that color picture tubes from Japan are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) with determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

**EFFECTIVE DATE:** November 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Brinkmann, (202) 377-3965 or John Kenkel, (202) 377-3530, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

## Final Determination

We have determined that color picture tubes from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

## Case History

On June 24, 1987, we made an affirmative preliminary determination (52 FR 24320, June 30, 1987). The following events have occurred since the publication of that notice.

On June 26, 1987, Hitachi Ltd. (Hatachi), a respondent in this case, requested that the Department extend the period for the final determination until not later than 135 days after the date on which the Department published its preliminary determination. On July 1, 1987 and July 6, 1987, Matsushita Electric Corporation (Matshushita), and Mitsubishi Electric Corporation (Mitsubishi), respectively, also respondents in this case, made similar requests. The Department granted these requests, and postponed its final determination until not later than November 12, 1987 (52 FR 27696, July 23, 1987).

Questionaire responses from all respondents were verified in Japan, Singapore, Malaysia, Taiwan, Hong Kong, Mexico, and the United States during July and August 1987.

On September 29, 1987, the Department held a public hearing. Interested parties also submitted comments for the record in their pre-hearing briefs of September 25, 1987, and in their post-hearing briefs of October 10, 1987.

## Scope of Investigation

The products covered by this investigation are color picture tubes (CPTs) which are provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520. The corresponding Harmonized System (HS) numbers are 8540.11.00.10, 8540.11.00.20, 8540.11.00.30, 8540.11.00.40, 8540.11.00.50 and 8540.11.00.60.

CPTs are defined as cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing.

Petitioners have also requested that the Department examine CPT's which are shipped and imported together with other parts as televison receiver kits (which contain all parts necessary for assembly into complete television receivers), or as incomplete television receiver assemblies that contain a CPT as well as additional components. Color television receiver kits ("kits") are provided for in TSUSA item 684.9655, while incomplete televison receiver assemblies ("assemblies") are provided for in TSUSA items 684.9656, 684.9658 and 684.9660. Additionally, petitioners requested that the Department include in the scope of this investigation, as transshipped Japanese CPTs, CPTs which enter the United States through third countries, such as Mexico, in conjunction with other televison receiver components and which are classified by Customs as kits and assemblies.

Kits shipped directly to the United States from Japan are already covered by the scope of the Department's antidumping duty finding on television receivers from Japan (36 FR 4597, March 10, 1971) and are, therefore, not included in the scope of this investigation. With regard to assemblies shipped directly to the United States, only certain shipments are included within the scope of the outstanding antidumping duty finding on television receivers from Japan. If what is being imported is capable of receiving "a broadcast television signal" and producing "a video image," the Department has previously determined that such merchandise is included within the Japanese television finding (46 FR 30163, June 5, 1981). The Department has also found that it takes six major television components to "receive a broadcast signal and produce a video image." These are: the cathode ray tube (i.e., the CPT), the tuner(s), the main printed circuit board, the chassis assembly, the flyback transformer, and the deflection yoke (46 FR 30167, June 5, 1981).

Thus, the issues remaining before the Department are whether to include in the scope of this proceeding (1) CPTs contained in assemblies shipped directly from Japan that are not covered by the finding on television receivers, and (2) CPTs contained in kits and assemblies shipped through Mexico. After a careful examination of the facts developed in this investigation, we have concluded that these CPTs should be included in the scope of this investigation. Evidence on the record shows that the CPT constitutes a substantial part of the value and cost of the kits shipped to the United States from Japan. Since, as stated above, assemblies contain fewer parts than kits, we determine that the CPT also constitutes a substantial

portion of the value and cost of assemblies entering the United States from Japan. Furthermore, evidence on the record shows that regardless of whether a Japanese CPT enters the United States as a kit, assembly, or simply as a CPT, the CPT enters the United States in its own carton or container and is typically unconnected to any other television receiver components. In these circumstances, the mere fact that a few additional components may be entered at the same time as the CPT does not change the fact that a CPT is being imported and potentially dumped. Thus, CPTs in assemblies from Japan, which contain less than the six components necessary to receive a broadcast signal and produce a video image, are included within the scope of this investigation.

We have further determined that CPTs entered for customs purposes as kits and assemblies from Mexico are Japanese CPTs being transshipped through that country. In reaching this conclusion, we have been guided by the following facts.

First, the Mexican shipments are composed of a CPT of Japanese origin and a color television chassis which has been assembled in a Mexican free trade zone from parts imported from various countries. Second, the Japanese CPTs do not enter the commerce of Mexico. They simply pass through the free trade zone en route to the United States. Third, at no time is the CPT removed from the original factory container until it arrives at the assembly operation in the United States. CPTs shipped through Mexico are not packed individually, but rather in so many units per container, the quantity dependent upon tube size. When the chassis assembly is ready for shipment, Matsushita Industrial de Baja California, in Mexico, removes the CPT from its warehouse, matches it up on paper for Customs purposes with the appropriate parts, and ships the entire assembly to its related color television receiver ("CTV") assembler in Chicago. The CPTs are not physically integrated with any other component, nor is there any value added to the CPT prior to importation into the United States. Finally, since the Japanese CPT manufacturer is related to the Mexican assembler and the U.S. importer of the Mexican "kits," it is clear that the Japanese manufacturer knows at the time of exportation that the CPTs will be ultimately exported to the United States. In sum, we have determined that Japanese CPTs do not enter the commerce of Mexico. They simply pass through a free trade zone en route to the U.S. The CPTs are not physically combined with any of the other components, nor is there any value added to the CPT. Because we have determined Japanese CPTs entering in kits or assemblies from Mexico are merely being transshipped through Mexico they are properly included in the scope of this proceeding.

**Fair Value Comparison Methodology**

To determine whether sales of CPTs in the United States were made at less than fair value, we compared the United States price to the foreign market value of such or similar merchandise for the period June 1, 1986 through November 30, 1986.

*Foreign Market Value*

In order to determine whether there were sufficient sales of the merchandise in the home market to serve as the basis for calculating foreign market value, we established separate categories of such or similar merchandise, based on the CPT screen size. We considered any CPT sold in the home market that was within plus or minus two inches in screen size of the CPT sold in the U.S. to be such or similar merchandise.

We then compared the volume of home market sales within each such or similar category to third country sales (excluding U.S. sales), in accordance with section 773(a)(1) of the Act. We determined that for all categories for Hitachi and Mitsubishi, there were sufficient home market sales so unrelated customers and/or arm's length sales to related customers, for each such or similar category to form an adequate basis for comparison to the CPTs imported into the United States. Therefore, foreign market value for Hitachi and Mitsubishi was calculated using home market sales.

For Matsushita, we determined that there were sufficient home market sales in some such or similar categories to form an adequate basis for comparison to the CPTs imported into the United States. However, the petitioners alleged that home market sales by Matsushita were at prices below the cost of production. We determined that all home market sales in these categories were above the cost of production. Therefore, foreign market value was calculated for Matsushita for these categories using home market sales.

For Matsushita's other such or similar categories, we determined that there were insufficient home market sales to unrelated customers or arm's length sales to related customers to form an adequate basis for comparison to the CPTs imported into the United States. In accordance with § 353.5 of our regulations, we also determined that the volume of Matsushita's sales of such or similar merchandise to third countries was inadequate for calculating foreign market value. Therefore, pursuant to § 353.6 of our regulations, we calculated foreign market value for these categories on the basis of constructed value.

*Purchase Price*

As provided in section 722(b) of the Act, we used the purchase price to represent the United States price for sales of CPTs made by Mitsubishi and Hitachi through related sales agents in the United States to unrelated purchasers prior to importation of the CPTs into the United States. The Department determined that purchase price, and not exporter's sales price, was the most appropriate indicator of United States price based on the following elements.

1. The merchandise was purchased or agreed to be purchased by the unrelated U.S. buyer prior to the date of importation from the manufacturer or producer of the merchandise for exportation to the United States.

2. The related selling agent located in the United States acted only as a processor of sales-related documentation and as a communication link with the unrelated U.S. buyers.

3. Rather than entering the inventory of the related selling agent, the merchandise in question was shipped directly from the manufacturer to the unrelated buyer. Thus, it did not give rise to storage and associated costs on the part of the selling agent or create added flexibility in marketing for the exporter.

4. Direct shipment from the manufacturer to the unrelated buyer was the customary commercial channel for sales of this merchandise between the parties involved.

Where all the above elements are met, as in this case, we regard the primary marketing functions and selling costs of the exporter as having occurred in the country of exportation prior to importation of the product into the United States. In such instances, we consider purchase price to be the appropriate basis for calculating United States price.

*Exporter's Sales Price*

For certain sales by Mitsubishi, Hitachi and all sales by Matsushita, we based United States price on exporter's sales price, in accordance with section 722(c) of the Act, since the sale to the first unrelated purchaser took place in the United States after importation.

*Best Information Available*

On March 18, 1987, Toshiba Corporation notified us that it would not be responding to the questionnaire because it is moving its CPT operation from Japan to the United States. Therefore, as required by section 776(b) of the Act, in making our fair value comparisons we used the best information available in calculating both United States price and foreign market value for Toshiba. We used information in the petition as the best information available.

**United States Price Calculations**

*Purchase Price*

We calculated purchase price based on the packed, c.i.f. and f.o.b. duty paid or f.o.b. duty unpaid prices to unrelated purchasers in the United States. For Mitsubishi, we made deductions from these prices for discounts. We also made deductions from these prices for discounts. We also made deductions under the following section of the Commerce Regulations:

1. Section 353.10(d)(2)(i)

Where appropriate, we deducted foreign inland freight, brokerage and handling charges, ocean freight, marine insurance, U.S. duty, and U.S. inland freight and insurance.

*Exporter's Sales Price*

For all exporter's sales price sales, the CPTs were imported into the United States by a related importer and incorporated into a CTV before being sold to the first unrelated party. Therefore, it was necessary to construct a selling price for the CPT from the sale of the CTV. To calculate exporter's sales price we used the packed, c.i.f. duty paid prices of CTVs to unrelated purchasers in the United States. For all respondents, we made deductions from these prices for discounts. We also made additions or deductions, where appropriate, under the following sections of the Commerce Regulations.

1. Section 353.10(d)(2)(i)

We made deductions for foreign wharfage, foreign inland freight, U.S. and foreign brokerage and handling charges, ocean freight, marine insurance, U.S. duty and U.S. inland freight.

2. Section 353.10(e)(1)

For Hitachi we made deductions for commissions paid to unrelated parties for selling the CTV in the United States.

For Mitsubishi we made deductions for commissions paid to sales representatives because they are treated the same as unrelated commissionaires.

3. Section 353.10(e)(2)

We made deducations, as noted below for each respondent, for direct and indirect selling expenses incurred by or for the account of the exporter in selling CTVs in the United States. Since it is the CTV and not the CPT that is ultimately sold in the United States, a proportional amount of the CTV selling expenses was allocated to the CPT based on the ratio of CPT cost of production to the CTV cost of production. The total of the indirect selling expenses allocated to the CPT formed the cap for the allowable home market selling expenses offset under § 353.15(c):

a. *Hitachi*—We deducted general indirect selling expenses and direct selling expenses for credit cost, advertising, warranties, and end-of-year volume rebates.

b. *Mitsubishi*—We deducted general indirect selling expenses and direct selling expenses for credit cost, rebates, and warranties.

c. *Matsushita*—We deducted general indirect selling expenses and direct selling expenses for credit cost, advertising, and warranties.

4. Section 353.10(e)(3)

For exporter's sales price sales by Hitachi, Mitsubishi and Matsushita involving further manufacturing, we deducted all value added to the CPT in the United States. This value added consisted of the costs associated with the production of the CTV, other than the costs of the CPT, and a proportional amount of the profit or loss related to these production costs which did not include the selling expenses. Profit or loss was calculated by deducting from the sales price of the CTV all production and selling costs incurred by the company for the CTVs. The total profit or loss was then allocated proportionately to all components of cost. The profit or loss attributable only to the production costs, other than CPT costs, was considered to be part of the value added in the U.S. production.

In determining the costs incurred to produce the CTV, the Department included (1) the costs of production for each component, (2) movement, inventory carrying costs and packing expenses for each component and (3) the cost of other materials, such as the cabinet, cables, fabrication, general expenses, including general administrative expenses and general R&D expenses incurred on behalf of the CTV by the parent, and interest expenses attributable to the production of the CTV in the U.S. The weighted-average quarterly costs for each component were converted at the average exchange rate during that quarter. These aggregated quarterly costs were then matched to the sales prices of the CTV during that quarter to determine the profit or loss.

The Department found no basis, such as an extended period for production or an extended time between receipt of the components in the U.S. and completion of the CTV, for lagging costs. Additionally, lagging exchange rates for components, including the CPT, could materially distort the determination since the U.S. price of the CPT would not then be valued as of the date of sale of the CTV.

In calculating the CPT and CTV costs, the Department relied primarily on the cost data provided by the respondents. In those instances where it appeared all costs were not included or were not appropriately quantified or valued in the response, certain adjustments were made.

To determine the companies' financial expense incurred in the production of the CTV, the Department considered the various unusual aspects of the manufacturing process. Because the total process, including the manufacturing of the various components as well as the CTV, was global in nature, involving numerous related companies around the world, the Department based the interest expense on the costs incurred by the consolidated corporate entity. Additionally, because this global process required the corporation to finance the costs of the components for an unusually lengthy period of time prior to the receipt by the U.S. manufacturer, the Department also included inventory carrying costs for those components manufactured by related companies. To impute this expense, the Department used the simple average interest rate of the consolidated company's outstanding debt and calculated a carrying cost of these components prior to the completion of the production of the CTV.

The interest expense was based on the consolidated corporate expense. The Department deducted interest income related to operations and a proportional amount of expenses attributed to accounts receivable and inventory since these costs were included in the cost of production for the final determination on a product specific basis. The interest expense was then applied as a percentage of the costs of manufacturing for each product.

For those major components manufactured by related companies, the Department used the costs incurred in producing such components and did not rely on the transfer prices of those components between related corporate entities when determining the CTV costs incurred by the consolidated corporation.

Royalty expenses incurred for production purposes were considered to be part of manufacturing, not selling expenses.

We made the following adjustments to the responses of individual companies.

a. *Mitsubishi*—Since Mitsubishi did not include general and administrative expenses or general R&D incurred by the corporate headquarters for the production of the chassis and CPT, the Department allocated a portion of these expenses to the CPT, chassis and other manufacturing costs incurred in the U.S. Furthermore, the Department allocated a proportional amount of consolidated interest expense to each company.

For the CPT, the company had changed its method of allocation for certain expenses between the third and fourth quarters of 1986, which lowered the costs attributable to the CPT. The Department revised these allocations to reflect the third quarter allocation method.

For the chassis, the Department did not allow a credit claimed for payroll taxes incurred in prior years to offset current year labor costs. We also reallocated electricity and certain indirect expenses to reflect the nature of the production process. Finally, the Department increased Mitsubishi's reported cost of manufacturing for the chassis, because it was originally based on internal corporate documents, which at verification did not reconcile to the financial statements.

For the other additional manufacturing processes incurred for the CTV, the Department excluded from production costs certain warehouse expenses which were considered to be part of selling expenses. Inventory carrying cost were calculated for the CPT and the chassis.

b. *Hitachi*—CPT and chassis costs were adjusted to reflect actual costs of production. They had been reported at transfer price in the submissions. For the CPT, the Department used the cost of production for the gun manufactured by a related company and adjusted for the yield loss experienced in manufacturing the tube. The Department also allocated inventory write-off expenses to the tube. For the chassis, the Department recalculated the general and administrative expenses of the company manufacturing the chassis as a percentage of cost of sales, and allocated general R&D and general and administrative expenses of the parent company to the chassis on a cost of sales basis. For other additional manufacturing costs incurred in the U.S., the Department included trading house expenses related to the components, inventory write-off expenses and an allocated amount of general R&D and general and administrative expenses of the parent company to the CTV on a cost of sales basis. Packing expenses of the CTV were revised to reflect verified costs. Inventory carrying costs were calculated for the CPT and chassis.

c. *Matsushita*—For CPTs, the method of allocation for labor and factory overhead was revised since the company had divided such costs by actual hours worked but applied the rate to the standard hours for each product.

For other components used in the production of the chassis and the CTV from related companies, the Department increased the costs of manufacturing to reflect the results of the Department's sample verification. Additionally, general expenses related to these components, which had not been included as part of the costs, were added.

For the additional manufacturing costs, expenses related to "early retirement" costs were included. Parent general and administrative expenses applicable to the subsidiary companies were included in the cost of production. General expenses of the related trading house companies were also included in cost of production.

**Foreign Market Value Calculations**

In accordance with section 773(a) of the Act, for Hitachi and Mitsubishi and where appropriate for Matsushita, we calculated foreign market value based on delivered, packed, home market prices to unrelated purchasers. For Matsushita and Mitsubishi, we did not include sales to related purchasers pursuant to 19 CFR 353.22(b) since those purchases were determined to be at prices which were not comparable to those at which such or similar merchandise was sold to persons unrelated to the seller. We made deductions, where appropriate, for inland freight, handling, insurance, and early payment discounts. We subtracted home market packing and added U.S. packing to home market prices.

Where U.S. price was based on purchase price sales and foreign market value was calculated using home market prices, we made adjustments to foreign market value under the following sections of the Commerce Regulations:

1. Section 353.15(a), (b)

Circumstances of sale adjustments were made for differences in directly related selling expenses in the U.S. and home market for each respondent as follows:

a. *Hitachi*—adjustments were made for credit expenses and end-of-year loyalty rebates.

b. *Mitsubishi*—adjustments were made for credit expenses, rebates, and warranties.

2. Section 353.16

Where there was no identical product in the home market with which to compare a product sold to the United States, we made adjustments to the price of similar merchandise to account for differences in the physical characteristics of the merchandise. These adjustments were based on differences in the costs of materials, direct labor, and directly related factory overhead.

Where U.S. price was based on exporter's sales price and foreign market value was calculated using home market prices, we made deductions from the prices under the following sections of the Commerce Regulations:

1. Section 353.15(c)

We made deductions, as noted below for each respondent, for direct and indirect selling expenses incurred by or for the account of the respondent in selling the CPTs in the home market. The amount of indirect expenses deducted for each respondent was limited to the total indirect expenses incurred for CPT sales in the United States. Total indirect CPT expenses, as noted in the "U.S. Price Calculation" section of the notice, were derived by allocating to CPTs a proportional amount of CTV selling expenses. For Hitachi and Mitsubishi, we offset commissions in the U.S. market with indirect selling expenses in the home market.

a. *Hitachi*—We deducted indirect selling expenses and direct selling expenses for credit costs and end-of-year loyalty rebates.

b. *Mitsubishi*—We deducted indirect selling expenses and direct selling expenses for credit costs, rebates, and warranties.

c. *Matsushita*—We deducted indirect selling expenses and direct selling expenses for credit costs.

2. Section 353.16

Where there was no identical product in the home market with which to compare a product sold to the United States we made adjustments to the price

of similar merchandise to account for differences in the physical characteristics of the merchandise. These adjustments were based on differences in the costs of materials, direct labor and directly related factory overhead.

Where U.S. price was based on exporter's sales price (for Matsushita) and there were not sufficient home market sales or third country sales of such or similar merchandise for the purpose of comparison, we calculated foreign market value based on constructed value in accordance with section 773(e) of the Act. For constructed value, the Department used the cost of all materials, fabrication, general expenses, and profit based on the respondents' submissions, revised, as detailed for the CPT under the "United States Price Calculation" section of this notice. Since general expenses were less than the statutory minimum of 10 percent of materials and fabrication, we used the 10 percent minimum. Since Matsushita did not provide profit data for the home market, we used profit information provided by them for CPTs in all markets as the best information available. This percentage exceeded the statutory minimum of 8 percent. We deducted the direct selling expense for home market credit. We also used indirect selling expenses in the home market to offset United States selling expenses, in accordance with § 353.15(c) of our regulations.

**Currency Conversion**

For comparisons involving exporter's sales price transactions, we use the official exchange rate on the dates of sales once the used of that exchange rate is consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the later law supersedes that section of the regulations. For comparisons involving purchase price transactions we made currency conversions in accordance with § 353.56(a)(1) of our regulations. All currency conversions were made at the exchange rates certified by the Federal Reserve Bank.

**Verification**

As provided in section 776(a) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures including examination of all relevant accounting records and original source documents provided by the respondents.

**Interested Party Comments**

*Japan Common Issues*

*Comment 1:* Petitioners argue that CPTs which are imported as part of kits or incomplete CTVs should continue to be included within the scope of the investigation. They argue that the Customs classification of these CTPs as "incomplete television receivers" or "kits" under TSUSA items 684.9655–684.9663, which are dutiable at a rate of 5 percent, does not necessitate their exclusion from a CPT order. They cite *Diversified Products Corp. v. U.S.*, 572 F. Supp. 883, 887 (CIT 1983) as a precedent which allows the Department to modify Customs classification in its determination of class or kind of merchandise.

Matsushita contends that these unfinished television receivers have sufficient value added in the third country to render them as kits or assemblies imported from a country (Mexico) not under investigation. Thus, Matsushita argues that CPTs included in kits and assemblies from Mexico are outside the scope of the proceeding.

*DOC Position:* We disagree with respondent. See the "Scope of Investigation" section of this notice for the DOC position.

*Comment 2:* Petitioners argue that CPTs sold to related parties which are subsequently incorporated into CTVs before they are sold to unrelated customers are properly included within the scope of the investigation. They cite section 772(e) of the Act as giving the Department authority to include merchandise which is further manufactured within the scope.

Matsushita and Hitachi argue that the Department should not include these transactions in the scope of this investigation since (1) the CPTs are sold as complete CTVs which are different products, sold in different markets, for which prices are determined by different market forces; and (2) the U.S. value added provision applies only when exporter's sales price calculations must be made. They contend that the Department could use the transfer price of these CPTs to related parties and base U.S. price on purchase price, thus making it unnecessary to investigate these CTV transactions.

*DOC Position:* Section 772(e)(3) of the Act requires the Department to make adjustments to exporter's sales price where the imported merchandise under investigation is subject to additional manufacturing or assembly by a related party. In this instance, CPTs are imported from Japan by related parties where they are further assembled into CTVs before being sold to the first unrelated party. Therefore, in order to determine the U.S. price of CPT, we properly deducted the value added to the CPT after importation.

The use of transfer prices between related parties to determine U.S. price is not provided for in section 772.

See the "U.S. Price Calculation" section above for a discussion of the methodology used.

*Comment 3:* Petitioners argue that the Department erred in its preliminary determination by failing to impute the inventory carrying cost associated with obtaining CTV components from related suppliers in calculating the cost of manufacture for CTVs. Petitioners maintain that the inventory carrying cost of the CTV components should be based on the time-in-inventory at the related suppliers' premises and the time-in-transit to the CTV production line in the United States.

*DOC Position:* We agree with the petitioners. We have imputed inventory carrying costs based on the time the company financed such costs prior to the date of completion of the production of the CTV. We have included those costs in calculating the cost of manufacture of the CTV.

*Comment 4:* Petitioners state that the inventory carrying costs incurred for CPTs prior to the time that they are incorporated into a CTV are CTV production costs rather than CPT costs. Respondents argue that these costs should be considered CPT costs.

*DOC Position:* We agree with the respondents. Those inventory carrying costs related to components which were added during the production of the CPT were considered as part of the value added in the U.S. because such costs were an integral part of these components. Likewise, the Department considered the inventory carrying costs on the CPT to be an integral part of the CPT costs prior to the importation in the U.S.

*Comment 5:* The petitioners argue that the Department's exclusion of certain CTV models on the grounds that the models were no longer being produced, or that the number sold was negligible, is arbitrary and not in accordance with the law. In particular, they claim the Department did not use a "generally recognized" sampling technique. The respondents contend that the CTV models selected by the Department represented nearly all the sales made during the period of investigation.

*DOC Position:* We disagree with the petitioners. There is no requirement that the Department examine all exporters or sales. The Department's regulation, 19 CFR 353.38, merely requires that we

examine at least 60 percent of the imports in question and we have done so in this proceeding. In this investigation, Matsushita, Mitsubishi, and Hitachi represented over 90 percent of all imports of CPTs from Japan. We have used best information available for another exporter, Toshiba. We investigated approximately 95 percent of the sales of each of the responding companies. Furthermore, we verified the total sales of each company in all markets as well as the quantity of CPTs incorporated into the models we chose to investigate. Because we found no discrepancies in these figures, we are satisfied that the remainder encompassed those models which had relatively few sales, were out of production, or were sold as replacement parts. Also, we do not view our decision allowing the respondents not to report a few sales as sampling. We disregarded these sales for reasons of administrative convenience, having concluded that these few sales would not add to the accuracy of our analysis.

*Comment 6:* The petitioners allege that the Department erred in its methodology of computing the exporter's sales price offset cap. They contend that we should not calculate an offset cap for CPTs from the CTV indirect selling expenses because selling expenses for CTVs will always be higher than those for CPTs. Rather, we should use indirect expenses of selling CPTs in the U.S. market to the related CTV producer for our exporter's sales price offset cap.

*DOC Position:* We disagree: Since it is CTVs and not CPTs which are ultimately sold in the U.S. and all selling expenses occur at the time of the CTV sale, we have prorated the selling expenses of CTVs to reflect the share of selling expenses attributable to CPTs for the purposes of creating an exporter's sales price offset cap. We view this methodology as more equitable and accurate than that proposed by petitioners. Petitioners' methodology would not be accurate because all respondents sold CPTs to related companies in the U.S. and the indirect selling expense incurred on such sales would not be representative of such expenses had the sales been to unrelated parties.

*Comment 7:* Petitioners argue that the methodology used by the Department to determine U.S. price for imports of CPTs by related parties is statutorily mandated under the value added provisions of section 772(e)(3) of the Act and is supported by Department Regulations and practice. However, the Department should not add profit to the CPT in those limited situations where there is evidence that the CPT is being transferred at prices below its cost of production or where the respondent's entire CPT operation is unprofitable. In such instances, the profit accrues to the CTV and not the CPT.

Respondents argue that the absence of any reference to profit in the "value added" sections of the statute or regulations is evidence that the law never contemplated such an adjustment and is, therefore, limited to costs associated with manufacturing or assembly in the United States.

*DOC Position:* We agree with petitioners, in part. It has been our long-standing practice to deduct the profit (or loss) associated with U.S. value added when the related party in the United States performs further manufacturing on the imported product.

We do not agree, however, that the adjustment should be limited to those situations where the transfer price exceeds the cost of producing the CPT or where the CPT operation is profitable. The profitability of the "sale" of the CPT to the related importer derives directly from the profitability of the subsequent sale of the CTV because this is the first sale to an unrelated customer. Whether the transfer price for the CPT is less than or exceeds the cost of producing the CPT does not affect that profitability.

*Comment 8:* Respondents argue that if profit is considered an appropriate part of U.S. value added, the Department should include movement charges and duties associated with transporting CPTs to the U.S. as part of the cost of manufacturing the CPT for purposes of calculating CPT profit. Furthermore, the Department should not add any profit attributable to CTV selling expenses to the value added since section 772(e)(3) limits the application of increased value to the process of manufacturing or assembly performed on the imported merchandise.

Petitioners argue the Department should not allocate profit to CPT movement costs because these are costs attributable to the production of the CTV in the U.S., not to the production of the CPT. Further, profit arising from selling expenses is properly a part of value added because the amount of profit earned on the sale of a CTV is directly affected by the cost to make it and the cost to sell it.

*DOC Position:* We agree with the respondents that section 772(e)(3) of the statute limits the value added deduction from U.S. price to any increased value including additional material and labor resulting from the process of manufacturing or assembly. Material and labor were specifically identified as elements of increased value. Not only were selling expenses not contemplated as elements of increased value, they were specifically provided for in section 772(e)(2) which calls for the deduction of expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise. Therefore, we did not include in the value added to the CPT in the U.S. any profit attributable to CTV selling expenses.

We also agree with respondents that CPT movement costs should be included as CPT costs in the allocation of profit to CPTs. Such costs are incurred prior to importation while the value added provisions apply to any increase in value made after importation.

*Comments Pertaining to Hitachi*

*Comment 1:* Petitioners argue that in making its final calculations, the Department should include the U.S. exporter sales price sales which respondent claims involved damaged CTVs. They contend that Hitachi has not established that the merchandise was damaged or that the sales were not made in the ordinary course of trade.

*DOC Position:* We disagree. We verified that the sales in question involved damaged merchandise. We have not considered them for the final determination.

*Comment 2:* Petitioners argue that Hitachi overstated home market packing expenses insofar as the reported amounts included warehousing fee costs and indirect shipping costs which are not direct packing costs.

*DOC Position:* The question is moot since we verified that the packing categories in question were averaged costs which were reported in equal amounts for both the U.S. and home market packing expense and thus have no effect on the margin calculation.

*Comment 3:* Petitioners argue that home market packing and inland freight should be reduced by the amount of profit earned by Hitachi Transport System, Ltd. on the services it provided the respondent because the two companies are related.

*DOC Position:* The question is moot. Since the home market and U.S. packing charges and inland freight were identical, the profit earned by the related company that packed Hitachi's CPTs was included in both home market and U.S. packing charges.

*Comment 4:* Petitioners argue that according to 19 CFR 353.55, the Department should ajust the U.S. price downward by the amount of the

antidumping duties that will be paid by Hitachi America, Limited (HAL/CG).

*DOC Position:* Section 353.55 of the regulations applies only to merchandise for which a notice ordering the suspension of liquidation has been published and on which antidumping duties are to be assessed. There should be no adjustment for reimbursement of antidumping duties since none were paid on any CPT sales made during the period of investigation.

*Comment 5:* Petitioners argue that the Department should not include royalty expenses associated with U.S. exporter sales price sales in production costs if the royalty expense is directly related to sales.

*DOC Position:* Since the royalties were paid for technical and production related expertise, these costs were included in the cost of production.

*Comment 6:* Petitioners argue that the Department should reject Hitachi's home market credit expense since the methodology used will overstate Hitachi's credit claim. They contend that the methodology does not reflect actual payment experience and does not account for the period between the invoice date and the date of shipment.

*DOC Position:* We disagree. We have determined that the methodology used by Hitachi, which was based on actual payment terms, was the best means available given the fact that its customers remit several payments for each shipment over an extended period of time. In addition, upon consideration of the discrepancies in Hitachi's reporting of payment date, we have determined that Hitachi's home market credit expense was conservatively reported rather than overstated. With regard to the date when the credit period began, the petitioners have misunderstood the paper flow for Hitachi's home market sales. The invoice date and the date of shipment are identical.

*Comment 7:* Petitioners argue that Hitachi overstated its home market inland freight charges by including certain "other freight and freight for return."

*DOC Position:* We disagree. We have determined that "other freight and freight for return" was appropriately included as part of inland freight costs since it is a valid expense that Hitachi actually incurred. In addition, the category in question was an average cost which was reported in equal amount, for both U.S. and home market inland freight.

*Comment 8:* Petitioners argue that Hitachi overstated home market inland insurance charges since the expense includes the transfer of merchandise inside the factory before the sale to the unrelated customer. They contend that inland insurance claims should be confined only to the premiums paid for insuring the merchandise during transport after the date of sale.

*DOC Position:* We disagree. Petitioners have misunderstood our treatment of Hitachi's inland insurance claim. All insurance expenses reported by Hitachi were verified to have been incurred after sale to the customer.

*Comment 9:* Petitioners argue that the Department should reject Hitachi's home market loyalty rebates since they were not established at the time of sale and since the Department verified that there were discrepancies between the amounts reported and amounts recorded in the company's books. Respondent argues that after-sale rebates are circumstance of sale adjustments and that the Department is vested with broad discretion to make these adjustments. Hitachi further argues that the loyalty rebates, although having no direct counterpart in U.S. business practice, are a long-standing actual business practice in Japan, that Hitachi's loyal customers expect these payments, and that Hitachi expects to make the payments.

*DOC Position:* We disagree with petitioners. The Department verified that Hitachi's customers did receive the rebates in question. Furthermore, the historical patterns of loyalty rebates provided to Hitachi's customers, measured as the ratio of total rebate payments to total CPT sales, shows that the rebates granted were in the ordinary course of trade as standard business practice and were directly related to sales within the meaning of § 353.15(a) of our regulations.

*Comment 10:* Petitioners argue that the credit expense on U.S. exporter's sales price transactions was improperly reported. They note that Hitachi averaged all credit expenses for all CTV customers rather than reporting actual credit expense on a sale-by-sale basis and based the average on the entire fiscal year rather than on the period of investigation.

*DOC Position:* While we would prefer to make credit adjustment on a sale-by-sale basis, this is not always possible. In this instance, we found that the respondent's method of allocating its accrued credit expense was reasonable because the records of individual sales are maintained at its selling offices across the United States and because our review of selected invoices confirmed the accuracy of the accrual method of accounting for credit expenses. The average age of accounts receivable used was verified to have been based only on the period of investigation, not the entire fiscal year. For this reason, we have accepted the credit expense reported by Hitachi.

*Comment 11:* The petitioners argue that the respondent improperly reported the advertising expense on U.S. exporter's sales price transactions by allocating total advertising expense to all products on the basis of sales value rather than reporting the actual, model-specific expense for the products under investigation.

*DOC Position:* While we agree in principle with the petitioners, the allocation methodology employed by the respondent is reasonable since the respondent's accounting records for advertising expenses are not maintained on a product-specific basis. We verified that all of the products to which total advertising expense was allocated were consumer goods sold through channels similar to those for CTVs and that each category of advertising expense related to all products.

*Comment 12:* Respondent requests that the Department apply the special exchange rate rule in 19 CFR 3.56(b) by lagging exchange rates at least one full quarter. They claim that HAL/CG increased its prices by a weighted average amount comparable to the change in the value of currerncies and that these price increases were to adjust for the sharp appreciation of the yen rather than in response to inflation.

*DOC Position:* We are denying Hitachi's request. Hitachi failed to revise its prices within a reasonable period of time as required by the regulation. Furthermore, the price adjustments Hitachi did make were not applied to all customers and models and were not of a magnitude reflective of the declining value of the dollar in relation to the yen. Since the price increases were not consistently applied and were not large enough to accommodate the exchange rate changes, Hitachi did not demonstrate to the satisfaction of the Department that the price revisions were made solely in response to the fluctuation in exchange rates.

*Comment 13:* Petitioners argue that the Department should impute a freight charge for U.S. exporter's sales price transactions because the respondent allocated the freight expense improperly on the basis of sales value rather than volume or weight.

*DOC Position:* We agree in principle with the petitioners, however the facts of this case necessitate our acceptance of the allocation of the freight-out expense on the basis of sales value rather than volume. We verified that each of the respondent's shipments

contained a variety of products, the mix varying from customer to customer. The freight invoices the respondent received generally did not itemize charges for shipments covered. Given the complexity of calculating freight on any other basis, we accepted the allocation based on sales value.

*Comment 14:* Petitioners argue that the discounts and rebates granted on U.S. exporter's sales price transactions should be recalculated on a sales-specific basis rather than on an average basis. Hitachi argues that reporting sale-by-sale amounts would have been an enormous burden given the number of exporter's sales price transactions and the fact that many of the sales records are kept in regional offices throughout the country. Hitachi further views petitioners' objection to averaging for U.S. prices as only a one-sided argument.

*DOC Position:* We agree with peitioners that most accurate reporting of these discounts and rebates would be on the basis of individual sales. However, given the burden of reporting the amounts for each sale, we have determined that the averaging of these discounts and rebates closely approximates their effect on Hitachi's sales prices. In addition, at verification the total amounts reported for each category were tied to Hitachi's audited profit and loss statements, demonstrating the reliability of the discounts and rebates reported.

*Comment 15:* Petitioners argue that becuase the amount of volume rebate reported for U.S. exporter's sales price sales was verified to have been understated, the volume rebate should be recalculated based on the expenses actually incurred during the period of investigation.

Respondents contend that, although it was not mentioned in the Department's verification report of Hitachi Sales Corporation of America, the discrepancy between the amount of volume rebate reported and the actual amount incurred was explained during verification. The amount reported was based on the expense accrued during the period of investigation. The total amount accrued for the fiscal year was compared to the actual expense for the year. The difference noted in the verification report was due to an extraordinarily large payment being made prior to the period of investigation. For the period of investigation the actual and accrued amounts for the volume rebate were virtually identical. Therefore, the amount reported was accurate.

*DOC Position:* We agree with the respondent. The volume rebate was accurately reported.

*Comment 16:* Petitioners argue that flooring expenses incurred in U.S. exporter's sales price sales are a direct selling expense rather than an indirect selling expense as claimed by Hitachi and should be deducted from the U.S. price. They also note that the Department made a clercial error in its calculation of the company's flooring expense.

*DOC Position:* We agree. As was stated in the Department's verification report, the flooring expense is an expense paid to companies who finance purchases by CTV customers. Therefore, we have treated it as a direct selling expense.

*Comment 17:* Peitioners contend that Hitachi underreported its selling expenses by including service revenue in the denominator (total sales) of the ratio used to allocate expenses to the CTVs sold.

*DOC Position:* We disagree. The total sales amount used as denominator in the ratio did not include service revenue but reflected only "goods sold."

*Comment 18:* Petitioner assert that the respondent underreported the selling expense on U.S. exporter's sales price transactions by failing to report the selling expenses that the parent company incurs on behalf of its related U.S. sales office. Respondent claims that no such expenses are incurred.

*DOC Position:* During verification we found no evidence of Hitachi Sales Corporation of America's (HSCA) parent company incurring any expenses on U.S. exporter's sales price transactions.

*Comment 19:* Petitioners state that the Department should reject production costs reported for the chassis if it is found that Hitachi Television Taiwan, Ltd. (HTT) relied on transfer prices for parts obtained from related suppliers. Respondent argues that members of the Hitachi family deal with each other on an arm's-length basis and that the prices for parts supplied to HTT were comparable to those on the open market.

*DOC Response:* The Department used actual costs incurred in production for the major components of the CTV, the electron gun, CPT, and chassis in the calculation of the CTV cost of production.

*Comment 20:* Petitioners argue that the handling costs associated with the production of the chassis by HTT were excluded. Hitachi argues that the handling costs were included in the procurement costs reported by Hitachi for CPT production.

*DOC Response:* The Department verified that handling fees incurred by HTT in procuring the materials used to construct the chassis were included in the procurement costs reported by respondent.

*Comment 21:* Petitioners contend that all parent company expenses incurred in establishing and administering Hitachi's world-wide supply network of manufacturing and distribution facilities should be included in CTV costs. Respondent argues that all members of the Hitachi family conduct business with one another on a strictly arm's-length basis and the transfer prices and production costs reported were complete.

*DOC Response:* The Department includes all costs necessary to produce the merchandise under investigation. In the submission, Hitachi, Ltd.'s general and administrative expense had not been allocated to the chassis or CTV. For the final determination, we have allocated general and administrative expense incurred by Hitachi, Ltd. to these items on a cost of sales basis.

*Comment 22:* Petitioners claim that by allocating handling fees, G&A, interest expense, and other expenses to the chassis on the basis of sales price rather than cost of production, HTT's cost of production for the chassis was understated.

*DOC Response:* The Department reallocated G&A and handling fees based on "costs of sales" reported in the financial statements and applied this percentage to the "cost of manufacturing" of the chassis since the types of costs included in the "costs of sales" and "cost of manufacturing" are generally the same. The Department does not use the sales price ratio since the profit/losses related to the sales price of different products may materially distort the allocation of the costs.

The Department did not include "other expense" in the cost of production of the chassis, as this expense was determined to be non-operating in nature. The Department did not include interest expense or income reported by subsidiaries in order to compute consolidated interest expenses for the components based on the interest expense of the parent company.

*Comment 23:* Petitioners argue that the Department should include inventory write-offs of obsolete parts since they represent expenses incurred in producing the product.

*DOC Response:* The Department allocated a portion of write-offs recorded by Hitachi, Ltd.'s Mobara CPT plant and Hitachi Consumer Products of America's (HCPA) plant to the cost of producing the CPT and the CTV, respectively, since they were considered to be costs incurred to produce the

products. The Department agrees that obsolete parts are expenses incurred in normal operations which must be absorbed by current production.

*Comment 24:* Petitioners claim that the Department should recalculate HCPA freight and duty expenses for CTVs, since these charges were verified to have been more than double the amount than had been reported.

*DOC Response:* Freight and duty for all CTV components imported into the U.S. were included in the final calculations.

*Comment 25:* Petitioners state that the Department should take into account the fact that Hong Kong Purchasing Branch (HKPB) handling costs included costs for only one part of the chassis. They suggest multiplying the verified amount for handling costs by a factor of four since there are four parts per a complete chassis assemply.

*DOC Response:* The Department recalculated the Hong Kong handling costs for the chassis, since all costs incurred had not been included in the submission' reported costs.

*Comment 26:* Petitioners state that the Department should include the administrative charges paid to Hitachi Hong Kong by HKPB for the administrative support which it provides because these charges were not included. They also argue that, since the fee charged for transactions with HCPA is lower than that charged to other companies, the Department should use the higher rate since the lower rate is probably a preferential rate extended to related parties.

*DOC Response:* The Department recalculated the Hong Kong handling costs using the administrative cost rate that applied to all companies except Hitachi Consumer Products of America. The rate applied exclusively to HCPA transactions was significantly more favorable than the rate applied to all other transactions, and the Department considered the rate applied to other companies to reflect more accurately the parent's actual administrative costs.

*Comment 27:* Petitioners assert that Hitachi underreported production costs by failing to include the administrative costs incurred in CTV component distribution by related trading houses. Respondent maintains that no trading houses were involved in the transactions in this case.

*DOC Response:* Costs incurred by the trading houses in Hong Kong for the chassis and the CPTs were considered to be part of the costs of these components.

*Comment 28:* Petitioners claim that Hitachi understated R&D expenses since it allocated neither general nor product-specific R&D expenses incurred by Hitachi Ltd. to the chassis or to other component production costs. They argue that, in addition to factory level R&D for CPT production, the expenses fo parent and/or subsidiary R&D should be included. Respondent argues that the R&D incurred in developing component parts is covered by the royalty payments made by related companies to Hitachi.

*DOC Response:* The Department captures all costs necessary to produce the tube. General ongoing R&D was considered to be a necessary part of these costs. In its submission, Hitachi, Ltd.'s general R&D was not allocated to the chassis or the CTVs. Therefore, R&D expense incurred by Hitachi, Ltd. was allocated to these items on a cost of sales basis.

*Comment 29:* Respondent argues that in calculating CTV cost at the preliminary determination, the Department mistakenly double-counted certain costs incurred by Hitachi, which are associated with the packing and shipping of CPTs and other CTV components. Respondent requests that this double counting be eliminated in the final determination.

*DOC Response:* Hitachi had included shipping and other movement charges in the cost items listed as "miscellaneous" in its submission. During verification, we discovered that such costs were already included in the cost of production on an allocated basis by Hitachi. Therefore, for the final determination the Department removed the allocated charges reported in the cost of production for all components, recalculated the charges for the chassis and yoke and added these new charges to the cost of production. The Department used the specific charges reported for the CPT sales adjustments.

*Comment 30:* Respondent argues that the Department should not include an amount for interest expense in its calculation of the cost of production of the CPT. They claim that Hitachi had no net interest expense during the period for which cost information was provided.

*DOC Response:* The Department used the methodology described under § 353.10(e)(3) of the U.S. Price Calculation section of this notice. Because Hitachi's interest expense is very low, this methodology resulted in only inventory carrying costs and credit costs related to sales being included as financial expenses in the cost of production.

*Comment 31:* Respondent argues that the Department should calculate and publish separate rates for purchase price and exporter sales price transactions. They contend that, since purchase price transactions are sales of CTPs to unrelated OEM customers, and exporter sales price transactions involve CPTs imported by a Hitachi family company for use in the production of CTVs, it would be inappropriate to average margins on sales having such diverse marketing conditions. Petitioners argue that there is only one class or kind of merchandise under investigation which is CPTs, and it is Department practice to calculate one martin for the class or kind of merchandise whether the sales were purchase price or exporter's sales price.

*DOC Position:* Consistent with our past practice for fair value investigations, we are publishing a single antidumping duty rate for each firm investigated.

*Comment 32:* Hitachi contends that the Department erred in its preliminary determination by including an imputed inventory carrying cost for finished CTVs in the indirect CTV selling expenses because: (1) Inventory carrying cost is included in the cost of manufacture as a general expense found in accounts such as building depreciation, electricity and other expenses; (2) it is improper and contrary to the Department's policy to impute opportunity costs since they are theoretical rather than actual costs; and (3) under 19 CFR 353.15(d) the Department lacks the authority to impute indirect selling expenses as differences in circumstances of sale.

*DOC Position:* We disagree. The inventory carrying costs at issue are an imputed interest expense measuring the financial costs of holding inventory over time. As such, these costs would not be included in building depreciation, electricity, or other expenses in the cost of manufacturing. To the extent that a company has borrowed funds to finance its holding of inventory, we have reduced those interest expenses by a proportional amount of interest expense attributed to accounts receivable.

It has been the Department's practice to impute inventory carrying costs in exporter's sales price situations. We do not believe these costs are theoretical because a company is foregoing sales revenue as long as the merchandise is in inventory. We have not treated these inventory carrying costs as circumstance of sale selling expenses but as indirect selling expenses under § 353.10(e)(2) of the Commerce Regulations.

*Comments Pertaining to Mitsubishi*

*Comment 1:* Mitsubishi claims that sales of CTV model 8–1445 originally

reported to the Department as sales made during the period of investigation were actually sold prior to the period of investigation and should, therefore, be excluded from this investigation. This particular model was sold based on a contract dated January 24, 1986, and all shipments of this model made during the period of investigation were made pursuant to this contract.

Petitioners argue that since respondent claims that the invoice date should be used as the general methodology for establishing date of sale, the sale of model 8–1445 should not be treated any differently than any other sale. Petitioners further argue that since Mitsubishi records sales in its financial accounting records by invoice date, it would be wrong to make an exception that would not be supported by these accounting records.

*DOC Position:* We agree with Mitsubishi. In general, date of sale in this case is not set until the invoice date. However, we examined the terms of the contract and established that all terms were set prior to the period of investigation. All shipments were made in compliance with this contract. Moreover, there were no additional contracts entered into during the period of investigation which would have led us to reject Mitsubishi's date of sale methodology.

*Comment 2:* Mitsubishi claims that model AM–1401R contains a monitor-grade CPT and should, therefore, be excluded from this investigation. It states that this model is not of the same class or kind as models containing television grade picture tubes. AM–1401R is sold by the Industrial Products Division and is not intended for television viewing or other entertainment purposes according to Mitsubishi.

Petitioners argue that the line between CPTs used in entertainment display devices and those used in computer monitors or other commercial devices is becoming blurred and there are no absolute standards to differentiate between the two. Also, they claim that there are already CPTs in the marketplace which can be used in both monitors and CTVs.

*DOC Position:* We agree with Mitsubishi. Our analysis of the technical and import data indicates that this model is properly classified as a monitor. As a result of this analysis and due to the channels of trade in which this model is sold, we are excluding model AM–1401R from this investigation.

*Comment 3:* Mitsubishi contends that the Department should subract only CPT warranty costs from the U.S. sales price instead of CTV warranty costs because (1) these expenses are incurred on a component specific basis; (2) Mitsubishi Sales America, Inc.'s (MESA) records provided component-by-component costs; and (3) the subject matter of this investigation involves a specific CTV component. The petitioners argue the Department should revise its preliminary determination calculations and deduct the CTV warranty cost as a direct selling expense in the value added analysis.

*DOC Position:* We agree with the petitioners. As described elsewhere in the notice, the Department has determined that all costs added to the CPT after importation are considered U.S. value added and deducted from the selling price of the CTV to arrive at a constructed price for the CPT. Selling expenses, including CTV warranty expenses, are an element of these costs, which are properly deducted from the CTV selling price.

*Comment 4:* Mitsubishi contends that the Department should average volume rebates and term discounts over all eligible sales since these expenses mainly pertain to products not covered in this investigation.

*DOC Position:* As noted in response to Hitachi Comment 11, we believe it is more appropriate to calculate these expenses on a customer-by-customer basis and to do so when possible.

*Comment 5:* Mitsubishi states that some of MESA's credits should not be disallowed as intracompany transfers. It notes that these MESA credits are included as debits on the books of Mitsubishi Consumer Electronics America, Inc. (MCEA) and have been included as part of MCEA's overhead expense. Accordingly, MCEA's overhead expenses should be reduced as an offset in an amount equal to these credits.

*DOC Position:* We agree with the respondent and have reduced the overhead expenses in an amount equal to these intracompany transfers.

*Comment 6:* Mitsubishi argues that model A51JCC80X is the most similar home market model to U.S. model A51JCC23XE. Mitsubishi states that panel glass is of primary importance in determining the most similar model and the tint panel on model A51JCC80X most closely resembles the blue panel on the U.S. model. Also, respondent notes that the cost difference between model A51JCC80X and A51JCC23XE is smaller than for any other 20-inch model and that model A51JCC80X was sold in the highest volume during the period of investigation.

Petitioners disagree, based on the Department's verification report and the technical characteristics provided by Mitsubishi. Petitioners recommend using home market model A51JCC71X, which has an identical shadow mask and flat grill. Also, according to petitioners, the light transmission rates, which are affected by panel color, are identical on models A51JCC23XE and A51JCC71X.

*DOC Position:* We agree with petitioners that models A51JCC01X, A51JCC71X and A51JCC21X are all more similar to the U.S. model than home market model A51JCC80X. However, based on our analysis of the technical data provided for all models, we have determined that model A51JCC71X is the most similar home market model. Therefore, we have used sales of this model in our fair value comparisons.

*Comment 7:* Mitsubishi believes that the Department should adjust the bill of materials by the material yields in calculating the difference in merchandise adjustment. Petitioners contend that no physical difference in merchandise adjustment should be made for differences in yields. They argue that, unless Mitsubishi can establish that its claim for differences in manufacturing yields is directly related to differences in the physical characteristics of the merchandise, this portion of its claim should be denied.

*DOC Position:* We agree with petitioners. The yield ratios applied by Mitsubishi are yields relating to the cost of production of two different CPT models, not yields on the physical difference in merchandise components.

*Comment 8:* Mitsubishi contends that the Department's calculation of indirect expenses would exclude almost all of Kyoto Works' indirect expenses and is, therefore, inappropriate. Mitsubishi argues that if the Department decides to modify this calculation it would be more appropriate to reallocate these indirect expenses as opposed to excluding almost all of them.

Petitioners claim that certain home market indirect selling expenses should be rejected if these expenses include non-CPT selling expenses.

*DOC Position:* At verification, we determined that certain indirect selling expenses that Mitsubishi claimed in the home market were not related to CPTs. These expenses were deducted from the total indirect selling expenses claimed by Mitsubishi and reallocated to CPTs using the allocation methodology provided by Mitsubishi. Mitsubishi's method for allocating these expenses to CPTs did not contain the elements necessary to allow the Department to consider alternate methods of allocation and, therefore, we used Mitsubishi's allocation methodology.

*Comment 9:* Petitioners argue that physical difference in merchandise adjustments should be applied on a model-by-model basis as opposed to calculating an average foreign market value which contains an average physical difference in merchandise adjustment in that figure.

*DOC Position:* We applied difference in merchandise adjustments for each specific model when comparing it to the U.S. model. The resulting difference in merchandise adjustment was, therefore, calculated on a model-by-model basis.

*Comment 10:* Petitioners claim that a monthly foreign market value should be calculated as opposed to a foreign market value covering the entire period of investigation. Petitioners state that CPT prices on home market models declined sharply during the period of investigation and in the past the Department has correctly used a monthly weighted-average foreign market value in such circumstances.

*DOC Position:* We disagree with petitioners. We see no evidence of sharp price declines in Japan during the period of investigation and, therefore, there is no need to calculate a monthly foreign market value.

*Comment 11:* Petitioners state that Mitsubishi's home market credit expenses should be calculated using the date between shipment and receipt of payment by Mitsubishi as opposed to the turnover rate calculation used in the preliminary determination.

Petitioners also claim that Mitsubishi incorrectly calculated a weighted-average interest rate using costs incurred prior to the period of investigation and should recalculate a single weighted-average interest rate for the months June-November, 1986.

*DOC Position:* We agree with petitioners. We have calculated home market credit expense using the time between shipment and receipt of payment. We have also recalculated a new interest rate more representative of the period of investigation.

*Comment 12:* Petitioners claim that Mitsubishi's home market volume rebate claim should be denied since it is unclear how this rebate was calculated and whether it applies only to CPTs.

*DOC Position:* We disagree with petitioners. This expense was calculated on a model-by-model basis and its accuracy was confirmed at verfication.

*Comment 13:* Petitioners argue that Mitsubishi's home market price protection rebate claim should be denied. Petitioners claim that respondent failed to establish that its price protection rebates were made in the ordinary course of trade and that it is unclear whether these adjustments were directly to specific sales.

*DOC Position:* We disagree with petitioners. We verified that this rebate was tied to specific sales and is a routine practice.

*Comment 14:* Petitioners claim that Mitsubishi's home market advertising expenses should be denied or only accepted as an indirect selling expense.

*DOC Position:* We have treated this claim as an indirect selling expense since Mitsubishi was unable to demonstrate that these expenses were directly related to the sales under investigation.

*Comment 15:* Petitioners claim Mitsubishi failed to establish the fact that there were warranty agreements with customers. Also, warranty expenses were neither direct nor indirect selling expenses because Mitsubishi's waranty calculation reflects recycling, which is not a warranty expense.

*DOC Position:* We disagree with petitioners. A formal agreement at the time of sale is not necessary in order to make a warranty claim. Mitsubishi demonstrated a five year history of warranty expense claims. Therefore, customers should be aware of the existence of these warranties. We have recalculated this expense on model-by-model basis.

*Comment 16:* Petitioners argue that indirect selling expenses incurred in Japan in selling CPTs to Mitsubishi's related CTV producer in the U.S. should not be considered a CPT selling expense but a production cost incurred in Japan on behalf of its U.S. CTV operations.

Mitsubishi argues that this is an accounting expense totally unrelated to production activity. If this expense is included, respondent claims it should be considered as a CPT selling expense, not a production-related expense. Furthermore, the Department should apply the verified ratio to the CPT transfer price.

*DOC Position:* We agree with the respondent that these are selling expenses incurred on the sale of the CTV and have included them as CTV indirect selling expenses. We also agree with the respondent in that this expense should be calculated by multiplying the CPT transfer price by the verified ratio.

*Comment 17:* Petioners claim Mitsubishi's method of offsetting sales made during the period of investigation with returns made during the period of investigation may understate dumping margins. Petitioners argue that respondent can select which customers' sales will be reduced by returns and consequently assign returns to customers that are provided with the largest number of sales inducements and rebates. Petitioners suggest that the Department require Mitsubishi to submit a listing of sales excluded using its methodology, including customer numbers.

*DOC Position:* We agree with petitioners. A relatively small percent of all sales during the period of investigation had corresponding returns. A significant percent of these returns could be matched directly as to customer, model number and price to a single invoice. The remaining returns were matched to sales based on model number and price; only the customer was different. Therefore, respondent's methodology appears to be a reasonable and precise way of matching these credit returns. While Mitsubishi compared prices on a gross invoice basis, these returns were relatively so small in number that we have determined that they will not affect the margin calculation.

*Comment 18:* Petioners allege that Mitsubishi has large differences in its credit costs due to the existence of service fees paid to and by flooring companies and differing payment periods for certain classes of customers. Therefore, it should not be allowed to average these costs by submitting an average accounts receivable turnover rate for calculating the number of days that payments is outstanding. Mitsubishi argues that its records do not track shipment date to payment date on a sale-by-sale basis, and the charges paid to flooring companies were recalculated on a customer-by-customer basis. Mitsubishi asserts that the approach utilized by MESA was the most accurate.

*DOC Position:* We generally agree with the petitioners. However, the respondent did not maintain its records in a manner whereby precise credit costs and flooring expenses could be determined on a sale-by-sale basis. Therefore, we deducted an average amount for these costs and treated both credit costs and flooring expenses as direct selling expenses.

*Comment 19:* Petitioners allege that Mitsubishi understated its CTV packing expenses. Petitioners claim that the Department should adjust Mitsubishi's packing costs to reflect actual cost incurred and ensure that the standards accurately reflect the labor times in the current period.

*DOC Position:* This expense has been revised and verified and will be used in the final analysis.

*Comment 20:* Petitioners argue that Mitsubishi's U.S. sales of 35-inch CPTs are properly included in the scope of

this investigation. They claim that minor differences in design are not sufficient grounds for exclusion of the 35-inch CPT from this investigation. Furthermore, petitioners claim that the ultimate uses and expectation of consumers as well as the manner of advertisements and channels of trade are no different for 35-inch CPTs than for any other size.

*DOC Position:* We agree with petitioners. The 35-inch CPT is a cathode ray tube suitable for use in the manufacture of CTV receivers or other color entertainment devices intended for television and as such is clearly included in the scope of this investigation.

*Comment 21:* Mitsubishi states that it treated all general expenses appropriately, and that G&A expenses of headquarters were allocated to subsidiaries in fair amounts and do not need to be increased. The petitioners argue that the expenses incurred by Mitsubishi must be allocated to subsidiary operations because they were incurred on behalf of these operations.

*DOC Position:* The Department attributed general and administrative expenses related to the headquarter operations to all companies. Since the respondent has not provided an amount for such expenses, the Department used, as best information, adjusted information from the consolidated financial statements.

*Comment 22:* Petitioners claim that the respondent misallocated G&A expenses by using arbitrarily determined standard times for the G&A at the plant manufacturing the CTV. Mitsubishi states that these expenses were allocated to product groups by cost of sales, not standard times.

*DOC Position:* The respondent used cost of sales to allocate the general and administrative costs between Projection TV (PTV) and CTV production. The general and administrative costs were then allocated to individual products based on standard time. The Department verified the allocation of general and administrative costs and concluded that respondent's method was not distortive.

*Comment 23:* Petitioners claim that financial expense claims of United Electronic Engineering Corp. Pte. Ltd.'s (UEEC) (the company in Singapore that produces chassis) are understated. Petitioners suggest that if the Department cannot determine the actual financial expenses of UEEC attributable to CTV chassis, the Department should use the greater of the financial expenses from the monthly profit and loss statements or the audited financial statements and allocate the expenses using the respective costs of goods sold. Also, petitioners claim that no deduction from financial expense for financial revenues should be made.

*DOC Position:* The Department used the consolidated financial expenses of the corporation as a basis for determining the financial expense to be attributed to the various components. This expense was allocated on the basis of cost of goods sold.

*Comment 24:* Petitioners claim Mitsubishi miscalculated G&A expenses attributable to the cost of producing the CPT by including taxes which do not relate to the cost of production. Petitioners argue the Department should deduct the business tax from G&A expenses attributable to the cost of production for CPTs.

*DOC Position:* The Department excluded the business tax, which was similar to an income tax, from its calculation of general and administrative expenses.

*Comment 25:* Mitsubishi claims that four Kyoto Works groups were devoted solely to CPT production activities and the indirect costs incurred by these groups should not be allocated overall products at Kyoto Works.

Petitioners claim that these expenses should be reallocated to all products manufactured by Kyoto Works using total acutal labor hours or the cost of goods sold for the respective products to distribute expenses between product lines and among products.

*DOC Position:* Review of verification exhibits subsequent to verification revealed that these groups were part of the CPT operation and that their costs should be attributed entirely to CPTs.

*Comment 26:* Mitsubishi states that there were no write-offs of printed circuit boards ("PCB") inventory used to produce chassis for CTVs either during 1986 or in the year-end adjustments.

Petitioners claim that since CTV models are constantly being introduced into the marketplace or updated, write-offs for inventory obsolescence of PCBs should be significant.

*DOC Position:* The Department has analyzed the documentation received during verification and determined that there was no indication of write-offs for PCB inventory and that none was needed. Therefore, the Department has not made any adjustment for obsolescence.

*Comment 27:* Mitsubishi states that the energy expenses were appropriately allocated in the submission between chassis and other products manufactured in that plant.

Petitioners claim respondent understated the actual energy expenses attributable to chassis production costs and that the Department should recalculate common energy expenses based on the space allocation percentages.

*DOC Position:* The Department reviewed the allocation of common energy expenses and found no basis or support for the respondent's methodology. Therefore, the Department reallocated the common energy costs based on production floor space used for the CTV chassis and car audio processes.

*Comment 28:* Mitsubishi claims that UEEC was not subject to a payroll tax in 1986 due to the abolition of this tax in 1985 by the Singapore Government.

Petitioners argue that Mitsubishi's chassis labor costs were understated since UEEC failed to account for the full amount of a payroll tax in its labor cost calculations. Petitioners state that the Department should recalculate labor costs to reflect this direct labor cost.

*DOC Position:* The Department examined documents during verification and determined that the credit for the payroll tax should not be included in the cost. The Department accordingly made the adjustment to eliminate the credit for payroll tax since credits related to prior expenses should not offset current costs.

*Comment 29:* Mitsubishi states that production costs of Model CS–2051 was inadvertently omitted in the questionnaire response.

Petitioners argue that the failure to report the third quarter production of Model CS–2051 would affect actual quarterly production costs and allocations.

*DOC Position:* Mitsubishi did not report the production costs for CTV model CS–2051 in the third quarter of 1986. Therefore, the Department used as best information the second quarter's material costs and the annualized fabrication rate to develop the cost of manufacturing for the product.

*Comment 30:* Mitsubishi claims that the transfers of personnel between the CTV and PTV buildings were insignificant during 1986. Also, the transfers were roughly equal, so the absolute levels offset one another with no net effect. Therefore, no change is required in the labor cost for CTV assembly.

Petitioners claim that Mitsubishi's U.S. labor costs on CTVs were understated due to this borrowing of personnel and that respondent did not provide revised labor cost figures to account for this additional labor cost.

*DOC Position:* Labor was transferred between the two production areas. The Department concluded, however, that

the effect of the transfer of employees between the department was minimal. Thus, no adjustment was made.

*Comment 31:* Mitsubishi contends that the cost of sales from the internal records and the audited financial statement are reconcilable and the reconciliation is provided in the verification Exhibit #48.

Petitioners claim that these internal financial statements formed the basis of the cost submission and that the discrepancy between the internal records and the audited financial statements should be allocated strictly to the cost of producing chassis used in producing CTVs under investigation.

*DOC Position:* The verification exhibit referred to by the respondent is the financial statements of the company, which does not provide a reconciliation. Therefore, the Department attributed a proportional amount of the difference between the audited financial statements and the internal financial statements to CTV chassis production

*Comment 32:* Petitioners claim that Mitsubishi's choice of standard times for allocation bases was inconsistent and arbitrary and resulted in cost understatements. Petitioners suggest that the Department should recalculate these expenses based on actual labor hours.

Mitsubishi states that the standard times used were always selected on a production lot basis and that this method does not underallocate expenses to CTVs that contain Japanese tubes.

*DOC Position:* The Department reviewed the standard times presented at verification. In cases where standard times were selected from outside the period of investigation they appeared to be reasonable when compared to those within the period of investigation. Therefore, we accepted Mitsubishi's allocation.

*Comment 33:* Petitioners state that costs submitted by Mitsubishi may not have reflected the costs incurred by related trading companies. Petitioners suggest that the Department should calculate the full cost incurred by Mitsubishi Sales Singapore Pte. Ltd. (MSS) in procuring materials for UEEC and for trading finished chassis to Mitsubishi Consumer Electronics America, Inc. (MCEA) from UEEC.

Mitsubishi argues that it submitted costs which overstate the expenses of MSS. Since the chassis go to MCEA, selling expenses are minimal according to Mitsubishi, and the commission exceeds the expenses incurred by MSS.

*DOC Position:* The Department has captured the costs incurred by MSS for chasses as a general and administrative expenses.

*Comment 34:* Petitioners argue that repondent failed to limit its fabrication costs to the period of investigation. Petitioners suggest the Department should recalculate actual fabrication costs strictly for each quarter in the period of investigation and allocate these costs based on the actual labor time per model in production rejecting Mitsubishi's annualized figures.

Mitsubishi contents that the annualized fabrication rate was appropriate because CTV production is somewhat seasonal and thus quarterly fabrication costs fluctuate widely. Moreover, the company is on the cash basis and adjustments to quarterly data would have been excessive, while accruals would be more properly reflected over an entire year. Finally, the price of the CTV was based on the total annual costs.

*DOC position:* the Department concluded that the annualized fabrication rate did not distort the fabrication cost incurred for the production of the CTV. Therefore, we did not adjust the respondent's submission.

*Comment 35:* Mitsubishi argues that the Department should not impute a cost to the time that raw materials are in inventory and in transit before CTV production. Respondent argues that the Department should not make such an extensive policy change regarding inventory carrying costs after a preliminary determination when that change was not anticipated in the preliminary.

Petitioners argue that the Department was required at verification to obtain the necessary information to quantify these costs. Also, petitioners claim that until the CTV is produced, sold to an unrelated party, and receipt of final payment is obtained, Mitsubishi is incurring carrying costs.

*DOC Position:* The Department included the inventory carrying costs for components obtained from related manufacturers. Since issues often arise at verification, which typically takes place after the preliminary determination, the Department is not limited to addressing the issues raised at the preliminary determination.

*Comment 36:* Mitsubishi claims that the electricity expenses for CTVs should be lowered in the final value added calculation. The two production buildings were metered separately for electricity. However, when preparing the response, Mitsubishi allocated the total pool of overhead expenses based on standard times. As a result, CTV production received roughly 70 percent of the expense rather than the 50 percent it should have received.

*DOC Position:* The Department disagrees that an adjustment should be made. The company did not present this adjustment nor relevant documentation during verification. The Department cannot accept unverified information as the basis for its final determination. Therefore, since the Department was not able to verify it we did not use it in our final determination.

*Comment 37:* Mitsubishi claims that automatic insertion expenses were overallocated to CTV chassis in its reponse and, therefore, the Department should adjust the CTV chassis costs.

*DOC Position:* The respondent could not support its contention that automatic insertion costs were over-allocated to chassis. Therefore, we did not make an adjustment between product groups.

*Comment 38:* Petitioners claim Mitsubishi failed to provide the weighted-average costs incurred for the production of chasses used in CTVs. Petitioners state that the costs and existence of the chassis production facilities at Woodlines and Kyoto were not reported in Mitsubishi's submisstions and Mitsubishi refused to provide such information. Petitioners argue that the Department should use the best information available, which is the cost of production of the highest cost Japanese producer of a comparably-sized chassis.

Mitsubishi claims that the issue of chassis costs for its Woodlines and Kyoto facilities was first raised at verification. Mitsubishi did not report these costs because it did not consider them to be relevant. Production from these plants is not comingled with production from the Bukit Timah chassis plant which produces chassis shipped to the U.S. MItsubishi claims that it did not attempt to hide these production facilities, which the Department has known about for years. Instead, it did not believe it necessary to use anything other than the Bukit Timah costs.

*DOC Position:* The Department's analysis of the cost for the Bukit Timah facility indicates that the costs provided are representative of the weighted-average costs of producing chassis.

*Comment 39:* MItsubishi claims that MCEA slightly overstated its finance expenses in the value added submission due to the fact that finance expenses for 1986 were calculated on an annual basis and included interest paid prior to the period of investigation. Mitsubishi contents that this payment should be excluded under the Department's usual policy of including only interest payments actually paid out during the period of investigation.

*DOC Position:* The Department used the consolidated interest expenses as a basis for determining interest expense. The Department was not presented with an adjustment during verification nor was any documentation provided during verification.Therefore, no adjustment has been made.

*Comment 40:* Mitsubishi argues that it is inappropriate to use the consolidated interest expenses for the U.S. subsidiaries. The subsidiaries are responsible for their own financing and to use an interest expense determined by the consolidated entity would be inconsistent between cases.

*DOC Position:* The Department used a proportional amount of the consolidated financial expense to determine the financial expense for each entity within the corporation. Funds from debt are fungible and the final decision regarding the amount of equity in any one entity is ultimately a result of the parent company's decisions.

*Comment 41:* Petitioners state that Mitsubishi's methods of calculating material cost may have led to an understatement of cost due to MCEA's failure to provide weighted-average, fully-absorbed material costs using a first-in, first-out inventory method. Mitsubishi claims it used average costs, not middle lots, for material costs. Costs for middle lots are only used for unrelated party transactions.

*DOC Position:* The Department reviewed the middle lots used for each quarter's costs on which the submissions were based and also the lots before and after this middle lot. The Department found the costs in the submission to be representative of actual costs.

*Comment 42:* Petitioners claim that Mitsubishi's interest expenses in the U.S. were understated and misallocated. Petitioners argue that the cost of financing was based on the terms between related parties and not on the actual cost of funds to the related lender. Also, petitioners claim that Mitsubishi incorrectly calculated net interest expense, did not itemize interest income and expenses, and did not show that the interest income was earned in production or sale of CTVs. Also, interest expense was allocated based on cost of sales which included the transfer prices of materials from related parties. This inclusion of transfer prices in the allocation of expenses may have understated the actual interest costs attributable to the cost of producing CTVs, according to petitioners.

Mitsubishi argues that interest expenses were correctly allocated to the product. The interest expenses were allocated based on cost of sales. The cost of sales used was based on transfer prices rather than cost of production. This assured that interest expenses were properly allocated to the product.

*DOC Position:* The interest expense incurred by MCEA was not used since the Deparment applied the interest expenses of the consolidated company.

*Comment 43:* Petitioners claim that respondent's allocation methods have led to an understatement of cost of chassis products. Petitioners suggest that the Department should recalculate and allocate indirect department costs, GS&A expenses and fabrication costs based on the cost of goods sold and actual direct labor hours.

*DOC Position:* The Department has reallocated such expenses based on the cost of sales as opposed to value of sales. Sales values of different products would include varying amounts of profit or loss and could distort the allocation.

*Comment 44:* Petitioners claim Mitsubishi understated the cost of material control attributable to CTV chassis production. Petitioners urge the Department to recalculate these costs.

*DOC Position:* The Department made an adjustment to the cost of producing chassis to reflect the proper allocation of material control costs. This adjustment was based on verified data regarding the use of store room space.

*Comment 45:* Petitioners claim Mitsubishi miscalculated CPT material costs by not accounting for all supplier rebates. Petitioners suggest that the Department recalculate materials costs, accounting for the full amounts of the actual rebates provided on a per part basis.

*DOC Position:* The cost of production includes actual material costs incurred during the period of investigation. The rebates were spread over the costs of the material inputs. Therefore, there is no distortion of material costs for the product.

*Comment 46:* Petitioners claim Mitsubishi substantially understated its UEEC chassis production costs because UEEC accounted for its material costs based on acquisition costs and not inventory values.

*DOC Position:* The Department verified material costs and analyzed the changes in material costs between quarters. There was no substantial change in material costs between periods and, therefore, no adjustment in material costs was considered necessary.

*Comments Pertaining to Matsushita*

*Comment 1:* Petitioners argue that Matsushita does not have complete and credible cost of production information on the administrative record. The response submitted by Matsushita did not disclose the data requested by the Department or the costs provided. Submissions of this nature cannot be adequately verified and the Department should use "best information available." Matsushita argues that it provided the Department all information requested and the Department should not use best information available.

*DOC Position:* Although during verification numerous omissions of requested data were noted, certain data pertaining to such omissions were obtained at verification. When inadequate data were not verified or included in the cost of production for the CPT, CTV or components, the Department revised the costs by using the "best information available."

*Comment 2:* The petitioners claim that the material and component costs for CTVs were reported inaccurately, resulting in an understatement of the non-CPT portion CTV cost, by using a two month lag for determining costs from related suppliers, not accounting for all costs for these parts (G&A, interest, trading house and transportation costs) and reporting only one of the three months in a quarter.

Matsushita claims that CTV and component costs were correctly stated. The cost of materials was properly based on puchase cost at a certain time prior to the date of production, due to the lag between purchase of the material and the date entering production, and that the Department was aware that only one month of the quarter had been submitted and did not request additional data until the verification. Matsushita requests that the general and administrative expenses submitted in its revised response be used for the components.

*DOC Position:* The Department agrees that all cost information requested by the Department in its questionnaire was not submitted. However, when it initially came to the Department's attention during verification that data for only one month of the quarter had been submitted, the Department obtained company source documentation which related to the other two months of each quarter. Therefore, the Department was able to supplement the costs in the response with information received during verification or obtained from the audited financial statements of the various entities manufacturing the components. The supplemental response submitted subsequent to the verification was not used for the Department's final calculations for computing general and

administrative expenses because such information was not explained.

*Comment 3:* Petitioners claim that the cost of the CTV was understated because costs related to early retirement were not included. Matsushita claims that these were extraordinary costs and should be excluded.

*DOC Position:* The Department agrees with the petitioners and has included such costs as part of the cost of production. The respondent did not provide data to support its claim that such costs were "extraordinary" nor reasoning to support the exclusion of such costs even if they were considered to be "extraordinary."

*Comment 4:* The petitioners claim that the costs of tuners and other components purchased from Matsushita Electronic Components of Malaysia by Matsushita Industrial Company (MIC) were understated because general expenses of the parent company were not included, exchange gains unrelated to production were included, and material costs from related suppliers were reported at transfer price. Matsushita contends that general and administrative expenses of the parent companies should not be included because each entity is an independent company, including the company that manufacturers the tuner.

*DOC Position:* The Department allocated an amount of headquarters general and administrative expenses to all companies involved in manufacturing the components of the CTV that were part of the consolidated corporate entity. Although each company may be considered a separate corporate entity legally, the management of the corporation and other services provided by headquarters would directly or indirectly benefit all companies included in the group. The Department did not include a deduction from the costs for exchange gains unrelated to production. The Department used the actual costs for the major components manufactured by related companies in order to determine the cost to produce the CTV and did not rely on transfer price.

*Comment 5:* Matsushita states that standard direct labor costs and factory overhead rates which were based on actual costs incurred by the company should be used without adjustment.

*DOC Position:* We disagree. Although the rates used by the company were based on actual costs, the labor costs and factory overhead costs were allocated by actual hours and then applied to the products based on standard hours. Since the actual hours exceeded the standard hours, all costs incurred during the period of investigation which were incurred for the production of the tubes were not absorbed, and, therefore, the product costs were understated. The Department adjusted the labor and overhead product costs to absorb fully the total costs of these elements.

*Comment 6:* The petitioners state that the Department should pay particular attention to the model matches used in foreign market value. The 13-inch model sold in the U.S. should be compared to sales to a related party in Japan, instead of a model sold to an unrelated party since the related sales were at arm's length and the sales to the unrelated company may have been exported and, therefore, are not home market sales. Also, Model 510WXB22 sold in the home market should be compared to U.S. models 501ABYB22 and A51JJL90X since it was under regular production and not solely a replacement tube. The Department should use sales of model 510WXB22 only to unrelated parties, since sales to related parties were not made at arm's length.

*DOC Position:* We have compared the 13-inch model sold in the U.S. to a 13-inch CPT sold in the home market to an unrelated party because sales made to related parties were not at arm's length. There is nothing in the record to substantiate petitioners' claim that this home market model was exported. We have not used model 510WXB22, a 19-inch model, sold in the home market to compare to the two U.S. models, even though it was in normal production and not merely produced in small quantities as a replacement tube. We found that sales quantity of this model were too small and, therefore, did not meet our viability test. Accordingly, we have used constructed value as foreign market value for 19- and 20-inch models because the volume of third country sales was determined to be inadequate under § 353.5.

*Comment 7:* The petitioners assert that difference-in-merchandise adjustments must be limited to differences in variable costs that resulted from differences in physical characteristics. Thus, the Department should not adjust for differences in "total" factory overhead, but rather only for "variable" factory overhead, and it should not adjust for differences in packing of certain components. Finally, the Department should not allow an adjustment claim when identical merchandise is being compared.

*DOC Position:* We agree. We limited our difference-in-merchandise adjustments to only variable costs for materials, labor and direct factory overhead. We did not adjust for packing differences.

*Comment 8:* The petitioners argue that home market and third country indirect selling expenses must not include G&A expenses of various head offices and general R&D expenses.

*DOC Position:* We disagree. Where various head offices were involved in the shipment of CPTs and other parts of CTVs, we have included a prorated share of their expenses.

*Comment 9:* The petitioners contend that the Department should not allow a deduction from foreign market value for rebates paid to related companies as these are simply intracorporate transfers.

*DOC Position:* We disagree. The granting of rebates is an accepted practice in this industry. To the extent that such rebates do not result in a practice that is not at arm's length between related parties, such rebates have been allowed.

*Comment 10:* Matsushita asserts that the Department should use a general company-wide profit for constructed value since it does not differentiate between profit for exports and domestic sales.

*DOC Position:* The Department used the company-wide profit for constructed value as the "best information available," since the company could not provide profit related to its home market sales.

*Comment 11:* Matsushita contends that the Department's calculation of an average short-term interest rate in the home market is wrong. The actual figure should be higher.

*DOC Position:* We agree. The higher figure is correct and we used it.

*Comment 12:* Matsushita asserts that if the Department deducts an imputed inventory carrying cost from the sales price, then it should also deduct a corresponding amount from the interest expenses.

*DOC Position:* The Department deducted a proportional amount of interest expense attributed to inventory to offset the inventory carrying costs.

*Comment 13:* Matsushita contends that the Department should use the average short-term interest rate of the parent company in each country for all calculations involving it and its subsidiaries.

*DOC Position:* We agree. We used the average short-term interest rate for the parent company in each country.

*Comment 14:* The petitioners allege that a significant amount of information was received at verification rather than in responses prior to verification. The petitioners are not privy to this information and, therefore, cannot assess its reasonableness. Additionally,

the Department found some information to be wrong at verification. After verification, Matsushita submitted new, corrected data. However, this data was not verified by the Department. Therefore, information presented during verification or unverified information should be rejected and best information should be used.

*DOC Position:* While we generally agree with the petitioners that a certain amount of information was received for the first time at verification, that information was generally submitted to the Department after verification as supplemental responses and therefore available to the petitioners. With regard to the data corrected after the verification, that data appears reasonable in light of the documents examined at verification. Therefore, we used it.

*Comment 15:* Petitioners assert that Matsushita did not report its cash and early payment discounts on U.S. sales, U.S. inland freight expenses, direct shipment discounts, cooperative advertising expenses, certain promotional expenses and warranty expenses in a sales-specific manner. Instead, it averaged these charges and prorated them over all sales, not just those sales to which these items belonged. It also misstated warranty parts costs and used a suspect figure for warranty costs incurred by Quasar. All of this leads to a skewing of actual dumping margins. Since Matsushita did not use a reasonable methodology, the Department should assume that these discounts and charges were granted and charged to all sales.

*DOC Position:* We disagree. Matsushita does not maintain its records with regard to these items on a sale-by-sale basis. We have determined that its methodology was reasonable and have therefore used it.

### Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of CPTs from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

| Manufacturer/producer/exporter | Weighted-average margin percentage |
|---|---|
| Mitsubishi Electric Corporation | 1.34 |
| Hitachi, Ltd | 22.29 |
| Matsushita Electronics Corporation | 32.91 |
| Toshiba Corporation | 33.50 |
| All others | 30.02 |

### ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on CPTs from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

November 12, 1987.

**Gilbert B. Kaplan,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 87-26590 Filed 11-17-87; 8:45 am]

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[A-580-605]

## Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Korea

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have determined that color picture tubes (CPTs) from Korea are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

**EFFECTIVE DATE:** November 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Brinkmann, (202) 377-3965 or Raymond Busen, (202) 377-3464, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

### Final Determination

We have determined that CPTs from Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). The weighted-average margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

### Case History

On June 24, 1987, we made an affirmative preliminary determination (52 FR 24318, June 30, 1987). The following events have occurred since the publication of that notice.

On July 1, 1987, Samsung Electron Devices Co., Ltd. (Samsung), a respondent in this case, requested that the Department extend the period for the final determination until not later than 135 days after the date on which the Department published its preliminary determination. The Department granted this request and postponed its final determination until not later than November 12, 1987 (52 FR 27696, July 23, 1987).

Questionnaire responses from both respondents, Gold Star Company, Ltd. (Gold Star) and Samsung, were verified in Korea from July 23 to July 29 and in the United States from August 24 to August 27.

On September 29, 1987, the Department held a public hearing. Interested parties also submitted comments for the record in their pre-hearing briefs of September 22, 1987, and in their post-hearing briefs of October 7, 1987.

### Scope of Investigation

The products covered by this investigation are color picture tubes (CPTs) which are provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520. The corresponding Harmonized System (HS) numbers are 8540.11.00.10, 8540.11.00.20, 8540.11.00.30, 8540.11.00.40, 8540.11.00.50 and 8540.11.00.60.

CPTs are defined as cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing.

In the initiation notice in this case, we tentatively included CPTs imported as parts of color television receiver kits or as a part of incomplete color television receiver assemblies, within the scope of

this proceeding. We recognized at that time that there could be an overlap between this proceeding and the existing order on complete and incomplete color television receivers from Korea ("CTV order") (40 FR 18336, April 30, 1984) because CPTs subsequently combined into televisions by a related party are covered by the CTV order.

We had tentatively determined to resolve this overlap by a partial revocation of the CTV order *(See, Color Television Receivers from Korea; Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Antidumping Duty Order,* 52 FR 6840, March 5, 1987). However, after consideration of all the comments received in the context of that administrative review, we decided to keep the entire CTV order in place. *(See, Final Results of Changed Circumstances Review and Determination Not to Revoke Antidumping Duty Order,* 52 FR 24500, July 1, 1987). Therefore, in the preliminary CPT determination, we found—and continue to find in this final determination—that those CPTs that are included within the scope of the CTV order will not be covered in this investigation.

In addition, we have determined that CPTs, which are not covered by the CTV order, are covered by this investigation unless all of the following criteria are met: (1) The CPT is "physically integrated" with other television receiver components in such a manner as to constitute one inseparable amalgam; and (2) the CPT does not constitute a significant portion of the cost or value of the items being imported.

This determination is driven by several considerations. First, an order against CPTs that excludes any CPT shipped with other television components could easily be circumvented by simply shipping all future CPTs to the United States in conjunction with at least one other television component. Secondly (and conversely), there must be a point at which a part, such as a CPT, becomes so integrated within another class or kind of merchandise that the part can no longer be regarded as being imported for purposes of the antidumping duty statute. Further, the statute does not permit an interpretation which could result, for example, in future petitions against car radios even when imported within fully-assembled cars or semiconductors even when imported within fully-assembled mainframe computers. Lastly, where the part constitutes a substantial portion of the cost or value of the article being imported, the dominant article does not lose its autonomy, character and use merely because it is imported within several other less important component parts.

As requested by the Department, Samsung and Gold Star also reported U.S. sales of CPTs which were imported into the United States during the period of investigation by a related company for use in the production of CTVs. We have determined that these CPTs are already covered by the scope of the Korean CTV order and, therefore, did not use these sales in our fair value comparisons. Since all of Gold Star's sales during the period of investigation were covered by the Korean CTV order, Gold Star was not included in our fair value comparisons.

**Fair Value Comparison Methodology**

To determine whether sales of CPTs in the United States were made at less than fair value, we compared the United States price to the foreign market value of such or similar merchandise for the period June 1, 1986 through November 30, 1986.

*Foreign Market Value*

In order to determine whether there were sufficient sales of the merchandise in the home market to serve as the basis for calculating foreign market value, we established separate categories of such or similar merchandise based on the CPT screen size. We considered any CPT sold in the home market that was within plus or minus two inches in screen size of the CPT sold in the U.S. to constitute a separate product category of such or similar merchandise.

We then compared the volume of home market sales within each such or similar category to third country sales (excluding U.S. sales), in accordance with section 773(a)(1) of the Act. We determined that for each such or similar category there were insufficient home market sales to unrelated customers or arm's length sales to related customers to form an adequate basis for comparison to the CPTs imported into the United States.

For 13-inch CPTs, we determined that there were no third country sales of identical merchandise. Therefore, in accordance with § 353.5 of our regulations, we determined that the third country market with the largest sales volume of 13-inch CPTs of the most similar merchandise was the United Kingdom. Accordingly, we based foreign market value of 13-inch CPTs on those sales. Similarly, pursuant to § 353.5, with regard to 19-inch CPTs, we determined that the third country with the largest volume of identical merchandise was Taiwan. Accordingly, we based foreign market value for 19-inch CPTs on those sales.

*Purchase Price*

As provided in section 772(b) of the Act, we used the purchase price to represent the United States price for sales of CPTs made by Samsung through a related sales agent in the United States to an unrelated purchaser prior to importation of the CPTs into the United States. The Department determined that purchase price and not exporter's sales price was the most appropriate indicator of United States price based on the following elements.

1. The merchandise was purchased or agreed to be purchased prior to the date of importation from the manufacturer or producer of the merchandise for exportation to the United States.

2. The related selling agent located in the United States acted only as a processor of sales-related documentation and as a communication link with the unrelated U.S. buyers.

3. Rather than entering into the inventory of the related selling agent, the merchandise in question was shipped directly from the manufacturer to the unrelated buyers. Thus, it did not give rise to storage and associated costs on the part of the selling agent or create flexibility in marketing for the exporter.

4. Direct shipments from the manufacturer to the unrelated buyer were the customary commercial channel for sales of this merchandise between the parties involved.

Where all the above elements are met, as in this case, we regard the primary marketing functions and selling costs of the exporter as having occurred in the country of exportation prior to importation of the product into the United States. In such instances, we consider purchase price to be the appropriate basis for calculating United States price.

**United States Price Calculations**

*Purchase Price*

We calculated purchase price based on the packed, c.i.f., duty paid prices to unrelated purchasers in the United States. We made deductions from these prices for discounts. We also made additions or deductions, where appropriate, under the following sections of the Commerce Regulations:

1. Section 353.10(d)(2)(i): We made deductions for foreign wharfage, foreign inland freight, U.S. and foreign brokerage and handling charges, ocean

freight, marine insurance, U.S. duty, and U.S. inland freight.

2. Section 353.10(d)(1)(ii): We made additions for duty drawback (i.e., imoprt duties which were rebated, or not collected, by reason of the exportation of the merchandise to the U.S.).

**Foreign Market Value Calculations**

In accordance with section 773(a) of the Act, we calculated foreign market value based on f.o.b., packed third country prices to unrelated purchasers. We made deductions for inland freight, brokerage, and wharfage. We subtracted third country packing and added U.S. packing to third country prices. We also made additions for duty drawback (i.e., import duties which were rebated, or not collected, by reason of the exportation of the merchandise to third countries).

Because U.S. price was based on purchase price sales, we made adjustments to foreign market value under the following sections of the Commerce Regulations:

1. Section 353.15(a), (b): Adjustments were made for difference in circumstances of sale in the U.S. and third country for credit expenses, advertising expenses, warranties, and royalties.

2. Section 353.16: Where there was no identical product in the third country with which to compare a product sold in the United States, we made adjustments to the foreign market value of similar merchandise to account for differences in the physical characteristics of the merchandise. These adjustments were based on differences in the costs of materials, direct labor, and directly related factory overhead.

**Currency Conversion**

We made currency conversions in accordance with § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

**Verification**

As provided in section 776(a) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of all relevant accounting records and original source documents provided by the respondents.

**Interested Party Comments**

Petitioners and respondent Samsung have raised certain issues which relate exclusively to home market sales. As explained in the "Foreign Market Value" section of this notice, we have determined that home market sales were insufficient to form an adequate basis for comparison to the CPTs imported into the United States. Therefore, in accordance with §§ 353.4 and 353.5 of our regulations, we calculated foreign market value using sales to third countries. Since we have determined that home market sales were inadequate for purposes of calculating foreign market value, we have addressed those issues which relate both to home market and third country sales, but have disregarded issues relating exclusively to home market sales.

*Comment 1:* Samsung alleges that the Department should not use home market sales to determine foreign market value of 13-inch CPTs. Samsung argues that the statute intends that the viability of the home market be determined by the adequacy of the sales it ultimately uses for comparison. Because the Department excluded sales to related parties in making its price-to-price comparisons, the viability of the home market should be retested using only unrelated party sales. Using this methodology, home market sales of 13-inch CPTs would clearly be inadequate for making price-to-price comparisons of such and similar merchandise.

Petitioners argue that the Department should use home market sales because (1) the statute and legislative history show a strong preference for using home market sales when establishing foreign market value; (2) the sales were made in the ordinary course of trade; (3) sales of 11- to 15-inch CPTs to both related and unrelated purchasers constitute a viable home market; and (4) it is not required that the quantity of actual sales used for comparison purposes exceed 5 percent of third country sales.

*DOC Position:* Under section 773(a)(1) of the Act, the Department is required to determine whether home market sales form an adequate basis for comparison. Section 353.4 of our regulations establishes the test for making this determination. Normally, we require that home market sales comprise five percent of sales to third country markets in order for the home market to be deemed "viable." Neither the statute nor the regulation specifically addresses the issue of whether "sales" related parties should be included for purposes of determining the viability of the home market.

Where home market sales are made through a related party seller, it would usually make little difference for purposes of performing the viability test if the producer reported sales to the related party or sales by the related party. Absent unusual circumstances, we would expect the amount of sales to the related party to approximate the amount of sales made by the related party. Also, in this situation, we would normally use the price charged to the first unrelated customer in calculating foreign market value.

Unlike these more normal situations, the Korean investigation of CPTs has presented unique circumstances. Many of the home market sales by CPT producers are to related parties who do not resell the CPTs. Instead, the related purchasers use these CPTs to produce CTVs. In this chain of transactions, the first sale to an unrelated party is the sale of a completed CTV. A completed CTV is not within the class or kind of merchandise being investigated, nor can it be considered such or similar merchandise. Thus, the sale of the completed CTV by the related purchaser cannot be used in calculating foreign market value.

In this situation, we have concluded that sales to related parties should not normally be included for purposes of performing the viability test. We have reached this conclusion based on a determination that the purpose of the viability test is to ascertain whether there is an adequate number of usable sales in the home market to form the basis for calculating foreign market value.

Section 353.22 of our regulations provides that the Department will not normally consider prices charged to related parties in determining foreign market value, unless it can be established that such prices are comparable to the prices at which such or similar merchandise is sold to unrelated buyers. Thus, unless the sales to the related buyers are made at arm's length, the Department would not normally use those sales for comparison purposes. Given the standard established by this regulation, we have concluded that sales to related parties should not be included in determining the viability of the home market unless those sales have been made at arm's length and, thus, can be used in calculating foreign market value.

*Comment 2:* Petitioners argue that the Department should make clear that the scope of this investigation, and any subsequent antidumping duty order, is contingent on the scope of the CTV antidumping duty order, so that all of Samsung's CPT imports will be covered in this proceeding or the companion CTV proceeding.

Both respondents argue that DOC correctly narrowed the scope of the CPT investigation to exclude those CPTs already subject to the outstanding CTV antidumping duty order. Gold Star contends that DOC should define the class or kind of merchandise upon

which it makes it final determination to include only those CPTs not subject to the outstanding antidumping duty order on CTVs from Korea.

*DOC Position:* We stand by our decision to narrow the scope of this investigation to include only those CPTs not subject to the outstanding antidumping duty order on CTVs from Korea. Thus, if the scope determination of the CTV order—which is currently under appeal—were overturned, we would examine those items excluded by the court from the CTV order to determine whether they might be subject to the CPT order.

*Comment 3:* Samsung argues that the Department has incorrectly treated local export sales to Korean companies in bonded factory areas as home market sales. Samsung contends that these CPTs should be treated as export sales because (1) Korean duty drawback law provides that goods shipped to a bonded factory are considered exported when they are shipped to the bonded factory and (2) Korean law states that goods sold under local letters of credit must be exported and not diverted for resale in the home market.

Petitioners contend that the sales should be treated as U.S. sales because Samsung knew that nearly all the CPTs it sells under local letters of credit are exported by Samsung's customers as CPTs, and Samsung has acknowledged that many of these CPTs are ultimately shipped to the United States.

*DOC Position:* From the documentation verified, it is clear that these CPTs are destined for export to unknown destinations in an unknown form. Samsung did not state that it had prior knowledge that specific shipments of these CPTs were destined for the United States. We verified from a variety of source documents that Samsung did not know the destination of these CPTs, except that they are for export as CPTs or as CPTs in CTVs. None of the local export sale customers are being investigated by the Office of Compliance as CTV or CTV kit exporters, and the only known Korean CPT exporters were Samsung, Gold Star, and Daewoo. Thus, we have no evidence which indicates that respondent knew or should have known whether these CPTs were ultimately shipped to the United States, either as CPTs or CTVs. Accordingly, these local export sales are considered export sales.

*Comment 4:* Petitioners argue that certain of Samsung's U.S. sales which showed revised upward prices should be rejected because Samsung has not established that its price revisions were made in the ordinary course of trade. Furthermore, since Samsung's dates of sale were based on purchase order modification dates, the sales should be rejected because the January 1987 price revisions were outside the June-November 1986 period of investigation.

Samsung contends that the Department should accept the revised prices because they were varified prices agreed to and paid by the customer in the ordinary course of business.

*DOC Position:* We verified that part of the sales in question had been involved and shipped during the period of investigation under an October 1986 purchase order revision. A subsequent January 16, 1987 Samsung price revision, however, raised the CPT price starting with deliveries after January 26, 1987. The remaining CPTs were invoiced and shipped in January and February 1987 under the revised price established by the January 16, 1987 price revision. Accordingly, the January 1987 revised sales prices which fell outside our period of investigation were not used in making our final determination.

*Comment 5:* Petitioners argue that the Department erred in allowing Samsung's duty drawback claim because Samsung failed to establish (1) that it paid the import duties refunded, and (2) that any correlation exists between the amount of duty drawback received and the import duties paid during the period of investigation on the subject CPTs.

Samsung states that Korean Customs only paid a drawback for duties that Samsung proved were paid—either by showing its own import documents or by showing its suppliers' certificates. Thus, Samsung can never receive more in drawback than was actually paid in duties. Samsung also states that there is no incentive for it to delay its drawback application because it would be foregoing use of those funds.

*DOC Position:* During verification, Samsung was able to demonstrate that it received duty drawback only in the amount of duties actually paid. Furthermore, we found no evidence to suggest that Samsung delays its drawback applications.

*Comment 6:* Petitioners argue that Samsung's claimed U.S. commission expenses should be treated as rebates or price discounts and deducted from the U.S. price, without making an offset with respect to indirect selling expenses in the comparison market. Petitioners believe that the fees paid on Samsung's U.S. transactions are akin to customer rebates because no commission agreement exists between the parties.

Samsung alleges these commissions are not rebates because no payments are made to the purchaser. Payments are made to a seperate company that happens to be related to the purchaser. Samsung alleges these payments are fees for performing services, and should be offset with indirect selling expenses.

*DOC Position:* We verified that no commission agreement existed between the parties involved. Further, we were unable to verify that any service was provided for the alleged commission. Absent evidence to the contrary, we have treated the amounts in question as a discount and deducted the amounts from the selling price.

*Comment 7:* Petitioners argue that Samsung's U.S. price should be adjusted downward to account for the antidumping duties that will be paid by Samsung's U.S. subsidiary, Samsung Pacific International (SPI).

Samsung argues that both the current and proposed regulations intend that such adjustments are only applicable when the importer (i.e., the party paying the antidumping duties) is reimbursed for the payment of such duties. Samsung states that no evidence exists to suggest it will be reimbursed for antidumping duties.

*DOC Position:* As stated in *Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review* (52 FR 8941, March 20, 1987), we do not consider estimated antidumping duties paid or antidumping bond premiums to be expenses related to the sales under review. Therefore, they should not be deducted from United States price. Furthermore, § 353.55(a)(2) of our regulations provides an adjustment for reimbursement of antidumping duties only for entries subject to an antidumping duty order. This is clearly not the case in this instance.

*Comment 8:* Petitioners argue that the Department should compute foreign market value for 19-inch CPTs using a monthly weighted-average, rather than a weighted-average for the entire 6-month period of investigation, because of rapidly changing prices throughout the 6-month period.

*DOC Position:* As noted in the "Foreign Market Value" section of this notice, we used third country prices to compute foreign market value. Our analysis indicated that sales to third country customer(s) were made at varying prices over the entire period with no consistent trend. Therefore, in accordance with § 353.20 of our regulations, we based foreign market value on the weighted-average price of all sales during the entire period.

*Comment 9:* Petitioners argue that no adjustment for physical differences in merchandise should be made for differences in manufacturing yields.

Petitioners allege differences in manufacturing yields are not necessarily due to physical differences in the merchandise, but may be due to production efficiency, random chance, manufacturing downtime, worker efficiency, breakage, or other factors.

*DOC Position:* Samsung has revised its physical differences in merchandise adjustments to exclude any cost differences due to differences in manufacturing yield.

*Comment 10:* Petitioners contend that Samsung's claimed circumstance-of-sale adjustment for certain home market advertising expenses should be rejected. They claim these expenses are either institutional in nature or are not directed at the ultimate customer or end-user of the product. Furthermore, petitioners allege Samsung has incorrectly based its advertising expense claim on the amount of advertising expenses accrued, rather than paid, during the period. Petitioners state that we should allow, as part of any advertising expense claim, only those actual expenses recorded in Samsung's advertising expense ledger in the months covered by our investigation.

Samsung states that a circumstance-of-sale adjustment is warranted for expenses incurred in advertising in magazines, newspapers, and trade publications because these publications are read by the ultimate customers or end-users (i.e., television dealers and distributors) who purchase televisions using Samsung CPTs from television and other video manufacturers. Furthermore, Samsung alleges that, under generally accepted accounting principles, the accrual method is considered more accurate than the cash method.

*DOC Position:* As noted in the "Foreign Market Value" section of this notice, foreign market value was based on sales to third countries. Our verification and analysis indicated that Samsung's claimed advertising expenses in export markets included (1) institutional advertising which promoted Samsung's name in general without stressing any particular product, and (2) advertising for "all products" which promoted CPTs as well as other Samsung products. Sample newspaper and magazine advertisements provided in the responses and at verification indicated that the advertisements were directed solely at the customer's customer—in this case, the retailer or wholesaler of the CTVs containing Samsung's CPTs. Therefore, in accordance with §353.15 of our regulations, we allowed advertsing as a circumstance-of-sale adjustment.

With regard to the method of recording advertising expenses, we consider the accrual method to be more accurate than the cash method because the former recognizes expenses actually incurred by the company for activities undertaken during the review period, while the latter recognizes expenses that relate to a company's activities during a previous period.

*Comment 11:* Petitioners contend that Samsung has overstated its home market warranty expenses by failing to demonstrate that certain fabrication costs associated with recycling defective CPTs and certain after-service activities expenses are incurred pursuant to a warranty or technical service agreement at the time of the CPT sale. Furthermore, to the extent that Sumsung has included fixed expenses in its direct warranty expense claim, this portion of the claim should be denied.

Samsung argues that our regulations explicitly recognize all warranty expenses as direct expenses. Moreover, Samsung argues that treating fixed warranty expenses as indirect would unfairly penalize Samsung for its decision to perform warranty services in-house. It argues that if it offered the same exact services, but used an independent contractor and paid on a per repair basis, the expense would be variable and, in petitioners' view, a direct expense.

*DOC Position:* As noted above in the section on "Foreign Market Value Calculation," foreign market value was based on sales to third countries. Our analysis and verification showed that warranty expenses incurred on third country and U.S. sales were variable in that they only related to replacement of CPTs. There were no after-service division expenses related to U.S. or third country sales. Therefore, in accordance with § 353.15 of our regulations, warranty expenses were allowed as a circumstance-of-sale adjustment.

### Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entires of CPTs from Korea that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall continue to require a cash deposit or the posting of a bond on all entries equal to the estimated average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

| Manufacturer/producer/exporter | Weighted-average margin percentage |
|---|---|
| Samsung Electron Devices Co., Ltd. | 1.91 |
| All others | 1.91 |

### ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumpting duty on CPTs from Korea entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

November 12, 1987.

**Gilbert B. Kaplan,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 87-26591 Filed 11-17-87; 8:45 am]

BILLING CODE 3510-DS-M

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**[A-559-601]**

## Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Singapore

**AGENCY:** Notice.

**SUMMARY:** We have determined that color picture tubes from Singapore are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

**EFFECTIVE DATE:** November 18, 1987.

**FOR FURTHER INFORMATION:** Contact John Brinkmann, (202) 377-3965 or Jess Bratton, (202) 377-3963, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**Final Determination**

We have determined that color picture tubes from Singapore are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (The Act). The weighted-average margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice. On June 24, 1987, we made an affirmative preliminary determination (52 FR 24318, June 30, 1987). The following events have occurred since the publication of that notice.

On June 26, 1987, counsel for Hitachi Electronic Devices (Singapore) Pte., Ltd. the respondent in this case, requested that the Department extend the period for the final determination until not later than 135 days after the date on which the Department publish its preliminary determination. The Department granted this request, and postponed its final determination until not later than November 12, 1987 (52 FR 27696, July 23, 1987).

The questionnaire response from the respondents was verified in Singapore from July 13 to July 22, and in Taiwan from August 3 to August 7 and in the United States from August 12 to August 25.

Interested parties submitted comments for the record in briefs on September 28, and October 9, 1987.

**Scope of Investigation**

The products covered by this investigation are color picture tubes (CPTs) which are provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520. The corresponding Harmonized System (HS) numbers are 8540.11.00.10, 8540.11.00.20, 8540.11.00.30, 8540.11.00.40, 8540.11.00.50 and 8540.11.00.60.

CPTs are defined as cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing.

Petitioners have also requested that the Department examine CPTs which are shipped and imported together with other parts as television receiver kits (which contain all parts necessary for assembly into complete television receivers) or as incomplete television receiver assemblies that contain a CPT as well as additonal components. Color television receiver kits ("kits") are provided for in TSUSA items 684.9655, while incomplete television receiver assemblies ("assemblies") are provided for in TSUSA items 684.9656, 684.9658 and 684.9660.

During the period of investigation, Hitachi did not sell kits and assemblies in the United States. Nonetheless, current import statistics indicate that substantial quantities of kits and assemblies are being exported to the United States. Thus, the issue before the Department is whether to include in the scope of this proceeding present and future shipments of CPTs which are classified for Customs purposes as kits or assemblies. We have determined that where a CPT is shipped and imported together with all the parts necessary for assembly into a complete television receiver (i.e., as a "kit"), the CPT is excluded from the scope of this investigation. The Department has previously determined in the Japanese (46 FR 30163, June 5, 1981) and Korean (49 FR 18336, April 30, 1984) television receiver ("CTV") cases that kits are to be treated for purposes of the antidumping statute as television receivers, not as a collection of individual parts. Stated differently, a kit and a fully-assembled television are a separate class of kind of merchandise from a CPT. Accordingly, we have determined that when CPTs are shipped together with other parts as television receiver kits, they are excluded from the scope of this investigation. We will determine in any future administrative review whether factual circumstances similar to those found by the Department in the Japanese CPT investigation warrant including Singaporean kits within this proceeding as transshipped CPTs.

With respect to CPTs which are imported for Customs purposes as incomplete television assemblies, we have determined that these entries are included within the scope of this investigation unless both of the following criteria are met: (1) The CPT is "physically integrated" with other television receiver components in such a manner as to constitute one inseparable amalgam; and, (2) the CPT does not constitute a significant portion of the cost or value of the items being imported. This determination is driven by several considerations. First, an order against CPTs that excludes any CPT shipped with other television components could easily be circumvented by simply shipping all future CPTs to the United States in conjunction with at least one other television component. Secondly (and conversely), there must be a point at which a part, such as a CPT, becomes so integrated within another class or kind or merchandise that the part can no longer be regarded as being imported as a separate item for purposes of the antidumping duty statute. Further, the statute does not permit an interpretation which could result, for example, in future petitions against car radios imported within fully-assembled cars or semiconductors imported within fully-assembled mainframe computers, when the part in question is inconsequential or small compared to the cost or value of the product of which it is a part. However, where the part (here a CPT) constitutes a substantial portion of the cost of value of the article being imported (here an assembly), the dominant article does not lose its autonomy, character and use merely because it is imported with several other less important component parts. We accordingly determine that assemblies are within the scope of this investigation.

**Fair Value Comparison Methodology**

To determine whether sales of CPTs in the United States were made at less than fair value, we compared the United States price to the foreign market value of such or similar merchandise for the period June 1, 1986 through November 30, 1986.

*Foreign Market Value*

In order to determine whether there were sufficient sales of the merchandise in the home market to serve as the basis for calcluating foreign market value, we established separate categories of such or similar merchandise, based on the CPT screen size. We considered any CPT sold in the home market that was within plus or minus two inches in screen size of the CPT sold in the U.S. to be such as similar merchandise.

We then compared the volume of home market sales within each such or similar category to third country sales (excluding U.S. sales), in accordance with section 773(a)(1) of the Act. We determined that there were sufficient home market sales to unrelated customers and/or arm's length sales to related customers, for each such or similar category to form an adequate basis for comparison to the CPTs imported into the United States. Therefore, foreign market value was calculated using home market sales.

*Purchase Price*

As provided in section 772(b) of the Act, we used the purchase price to represent the United States price for sales of CPTs made by Hitachi through a related sales agent in the United States to unrelated purchasers prior to importation of the CPTs into the United States. The Department determined that

purchase price and not exporter's sales price was the most appropriate indicator of United States price. We based that decision on the following elements.

1. The merchandise was purchased or agreed to be purchased by the unrelated U.S. buyer prior to the date of importation from the manufacture or producer of the merchandise for exportation to the United States.

2. The related selling agent located in the United States acted only as the processeor of sales-related documentation and as a communication link with the unrelated U.S. buyers;

3. Rather than enter the inventory of the related selling agent, the merchandise in question was shipped directly from the manufacturer to the unrelated buyer. Thus, it did not give rise to storage and associated costs on the part of the selling agent or create added flexibility in marketing for the exporter.

4. Direct shipments from the manufacturer to the unrelated buyer were the customary commercial channel for sales of this merchandise between the parties involved.

Where all the above elements are met, as in this case, we regard the primary marketing functions and selling costs of the exporter as having occurred in the country of exportation prior to the importation into the United States. In such instances, purchase price is the appropriate basis for calculating United States price.

*Exporter's Sales Price*

For certain sales we based United States price on exporter's sales price, in accordance with section 772(c) of the Act, since the sale to the first unrelated purchaser took place in the United States after importation.

**United States Price Calculations**

*Purchase Price*

We calculated purchase price based on the packed, c.i.f. duty paid prices to unrelated purchers in the United States. We made deductions under the following section of the Commerce Regulations:

1. Section 353.10(d)(2)(i)

We deducted foreign inland freight, brokerage and handling charges, ocean freight, marine insurance, U.S. duty and U.S. inland freight and insurance.

*Exporter's Sales Price*

For all exporter's sales price sales, the CPTs were imported into the United States by a related importer and incorporated into a CTV before being sold to the first unrelated party. Therefore, it was necessary to construct a selling price for the CPT from the sale of the CTV. To calculate exporter's sales price we used the packed, c.i.f. duty paid prices of CTVs to unrelated purchasers in the United States. We made deductions for discounts. We also made additions or deductions, where appropriate, under the following sections of the Commerce Regulations:

1. Section 353.10(d)(2)(i)

We made deductions for foreign wharfage, foreign inland freight, U.S. and foreign brokerage and handling charges, ocean freight, marine insurance, U.S. duty, and U.S. inland freight.

2. Section 353.10(e)(1)

We made deductions for commissions paid to unrelated parties for selling the merchandise in the United States.

3. Section 353.10(e)(2)

We made deductions for direct and indirect selling expenses incurred by or for the account of the exporter in selling CPTs in the United States. Since it is the CTV and not the CPT which is ultimately sold in the United States, a proportional amount of CTV selling expenses were allocated to the CPT based on the ratio of CPT cost of production to CTV cost of production. The total for the indirect selling expenses allocated to the CPT formed the cap for the allowable home market selling expenses offset under § 353.15(c). We deducted direct selling expenses for credit cost, advertising, warranties and end-of-year volume rebates.

4. Section 353.10(e)(3)

For exporter's sales price sales involving further manufacturing, we decided all value added in the United States. This value added consisted of the costs associated with the production of the CTV, other than the costs of the CPT, and a proportional amount of the profit or loss related to these production costs which did not include the selling expenses. Profit or loss was calculated by deducting from the sales price of the CTV, all production and selling costs incurred by the company for CTVs. The total profit or loss was then allocated proportionately to all components of cost. The profit or loss attributable only to the production costs, other than CPT costs, was considered to be part of the value added in the U.S. production.

In determining the costs incurred to produce the CTV, the Department included (1) the costs of production for each component, (2) movement, inventory carrying cost and packing expense of the components, and (3) material, fabrication, general expenses, including general and administrative expense and general R&D expenses incurred on behalf of the CTV by the parent. The weighted-average quarterly costs of each component were converted at the weighted-average exchange rate during that quarter. These aggregated quarterly costs were then matched to the sales price of the CTV during that quarter to determine the profit or loss.

The Department found no basis, such as an extended period for production or an extended time between receipt of the components in the U.S. and completion of the CTV, for lagging costs. Additionally, lagging the exchange rates for components, including the CPT, could materially distort the determination since the U.S. price of the CPT would not be valued as the date of sale of the CTV.

In calculating the CPT and CTV costs, the Department relied primarily on the cost data provided by the respondents. In those instances where it appeared all costs were not included or were not appropriately quantified or valued in the response, certain adjustments were made.

To determine the company's financial expense incurred in the production of the CTV, the Department considered the various unusual aspects of the manufacturing process. Because the total process, including the manufacturing of the various components as well as the CTV, was global in nature, involving numerous related companies around the world, the Department based the interest expense on the costs incurred by the consolidated corporate entity. Additionally, because this global process required the corporation to finance the costs of the components for an unusually lengthy period of time prior to their receipt by the U.S. manufacturer, the Department also included inventory carrying costs for those components manufactured by related companies. To impute this expense the Department used the simple average of the consolidaed company's outstanding debt to calculate the financing costs of carrying these components prior to the completion of the production of the CTV.

The interest expense was based on the consolidated corporate expense. The Department deducted interest income related to operations and a proportional amount of expenses attributable to accounts receivable and inventory since these costs were included in the cost of production for the final determination on a product specific basis. The interest expense was then applied as a percentage of the costs of manufacutring

of each product. Since Hitachi had very little interest expense, only inventory carrying costs and credit costs related to selling were included in the cost of production.

For the major components manufactured by related companies (i.e. chassis and CPT), the Department used the costs incurred in producing such components and did not rely on the transfer prices of those components between related corporate entities when determining the CTV costs incurred by the consolidated corporation.

Royalty expenses incurred for production purposes were considered to be part of manufacturing, not selling expenses.

CPT and chassis costs were adjusted to reflect actual costs of production. They had been reported at transfer price, in the submissions. For the CPT, the Department used the cost of production for the gun manufactured by a related company and adjusted for the yield loss experienced in manufacturing the tube. The Department also allocated general research and development and general and administrative expenses of the parent company to the CPT. For the chassis, the Department recalculated the general and administrative expenses of the company manufacturing the chassis as a percentage of cost of sales, and allocated general R&D and general and administrative expenses of the parent company to the chassis on a cost of sales basis. For other additional manufacturing costs incurred in the U.S., the Department included trading house expenses related to the components, inventory write-off expenses, and an allocated amount of general R&D and general and administrative expenses of the parent company to the CTV on a cost of sales basis. Packing expenses of the CTV were revised to reflect verified costs. Inventory carrying costs were calculated for the CPT and chassis.

**Foreign Market Value Calculations**

In accordance with section 773(a) of the Act, we calculated foreign market value based on delivered, packed, home market prices to unrelated and related purchasers. We included sales to related purchasers pursuant to 19 CFR 353.22(b) when the prices paid by those purchasers were at or above the prices paid by unrelated purchasers. We made deductions, where approriate, for inland freight, handling and insurance. We subtracted home market packing and added U.S. packing to home market prices.

Where U.S. price was based on purchase price sales, we made adjustments to foreign market value under the following sections of the Commerce Regulations:

1. Section 353.15(a), (b)

Circumstances of sale adjustments were made for differences in directly related selling expenses in the U.S. and home market for credit expenses.

2. Section 353.16

Where there was no identical product in the home market with which to compare a product sold to the United States, we made adjustments to the foreign market value of similar merchandise to account for differences in the physical characteristics of the merchandise. These adjustments were based on differences in the costs of materials, direct labor, and directly related factory overhead.

Where U.S. price was based on exporter's sales price we made deductions from the prices used to calculate foreign market value under the following sections of the Commerce Regulations:

1. Section 353.15(c)

We made deductions for credit costs directly related to sales and indirect selling expenses incurred by or for the account of the respondent in selling the CPTs in the home market. The amount of indirect expenses deducted was limited to the total indirect expenses incurred for CPT sales in the United States. The total indirect CPT expenses, as noted in the U.S. Price Calculation section of this notice, were derived by allocating to CPTs a proportional amount of CTV selling expenses.

**Currency Conversion**

For comparisions involving exporter's sales price transactions, we used the official exchange rate on the dates of sale since the use of that exchange rate is consistent with section 615 of the Trade and Tariff Act to 1984 (1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the later law supersedes that section of the regulations. For comparisons involving purchase price transactions, we made currency conversions in accordance with § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

**Verification**

As provided in section 776(a) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures including examination of all relevant accounting records and original source documents provided by the respondent.

**Interested Party Comments**

*Comment 1:* Petitioners argue that CPTs which are imported as part of kits or incomplete CTVs should continue to be included within the scope of the investigation. They argue that the Customs classification of these CPTs as "incomplete television receivers" or "kits" under TSUSA items 684.9655–684.9663, which are dutiable at a rate of five percent, does not necessitate their exclusion from a CPT order. They cite *Diversified Products Corp.* v. *U.S.*, 572 F. Supp. 883, 887 (CIT 1983) as a precedent which allows the Department to modify Customs classification in its determination of class or kind of merchandise.

*DOC Position:* We agree in part with petitioners. (See the "Scope of Investigation" section of this notice.)

*Comment 2:* Petitioners argue that CPTs sold to related parties which are subsequently incorporated into CTVs before they are sold to unrelated customers are properly included within the scope of the investigation. They cite section 772(e) of the Act as giving the Department authority to include merchandise which is further manufactured within the scope.

The respondent argues that the Department should not include these transactions in the scope of this investigation since (1) the CPTs are sold as complete CTV's which are different products, sold in different markets, for which prices are determined by different market forces; and (2) the U.S. value added provision applies only when exporter's sales price calculations must be made. It contends that the Department could use the transfer price of these CPTs to related parties and base U.S. price on purchase price, thus making it unnecessary to investigate these CTV transactions.

*DOC Position:* Section 772(e) of the Act requires the Department to make adjustments to exporter's sales price where the imported merchandise under investigation is subject to additional manufacturing or assembly by a related party. In this instance, CPTs are imported from Singapore by related parties where they are further assembled into CTVs before being sold to the first unrelated party. Therefore, in order to determine the U.S. price of the CPT, we properly deducted the value added to the CPT after importation.

The use of transfer prices between related parties to determine U.S. price is not provided for in section 772. See the "U.S. Price Calculation" section above

for a discussion of the methodology used.

*Comment 3:* Petitioners argue that the Department erred in its preliminary determination by failing to impute the inventory carrying cost associated with obtaining CTV components from related suppliers in calculating the cost of manufacture for CTVs. Petitioners maintain that the inventory carrying cost of the CTV components should be based on the time-in-inventory at the related suppliers' premises and the time-in-transit to the CTV production line in the United States.

*DOC Position:* We agree with the petitioners. We have imputed inventory carrying costs based on the time the company financed such costs prior to the date of completion of the production of the CTV. We have included those costs in calculating the cost of manufacture of the CTV.

*Comment 4:* Petitioners state that the inventory carrying costs incurred for CPTs prior to the time that they are incorported into a CTV are CTV production costs rather than CPT costs. The respondent argues that these costs should be considered CPT costs.

*DOC Position:* We agree with the respondent. Inventory carrying costs related to components which were added during the production of the CPT were considered as part of the value added in the U.S. because such costs were an integral part of these components. Likewise, the Department considered the inventory carrying costs of the CPT to be an integral part of the CPT costs prior to the importation into the United States.

*Comment 5:* The petitioners allege that the Department erred in its methodology of computing the exporter's sales price offset cap. They contend that the Department should not calculate an offset cap for CPTs from the CTV indirect selling expenses because selling expenses for CTVs will always be higher than those for CPTs. Rather, it should use indirect expenses of selling CPTs in the U.S. market to the related CTV producer for the exporter's sales price offset cap.

*DOC Position:* We disagree. Since it is CTVs and not CPTs which are ultimately sold in the U.S. and all selling expenses occur at the time of the CTV sale, we have prorated the selling expenses of CTVs to reflect the share of selling expenses attributable to CPTs for the purposes of creating an exporter's sales price offset cap. We view this methodology as more equitable and accurate than that proposed by petitioners. Petitioners' methodology would not be accurate because the respondent sold CPTs to related companies in the U.S. and the indirect selling expense incurred on such sales would not be representative of such expenses had the sales been to unrelated parties.

*Comment 6:* Petitioners argue that the methodology used by the Department to determine U.S. price for imports of CPTs by related parties is statutorily mandated under the value added provisions of section 772(e)(3) of the Act and is supported by Department regulations and practice. However, the Department should not add profit to the CPT in those limited situations where there is evidence that the CPT is being transferred at prices below its cost of production or where the respondent's entire CPT operation is unprofitable. In such instances, the profit accrues to the CTV and not the CPT.

The respondent argues that the absence of any reference to profit in the "value added" sections of the statute or regulations is evidence that the law never contemplated such an adjustment and is, therefore, limited to costs associated with manufacturing or assembly in the United States.

*DOC Position:* We agree with petitioners, in part. It has been our longstanding practice to deduct the profit (or loss) associated with U.S. value added when the related party in the United States performs further manufacturing on the imported product.

We do not agree, however, that the adjustment should be limited to those situations where the transfer price exceeds the cost of producing the CPT or where the CPT operation is profitable. The profitability of the "sale" of the CPT to the related importer derives directly from the profitability of the subsequent sale of the CPT because this is the first sale to an unrelated customer. Whether the transfer price for the CPT is less than or exceeds the cost of producing the CPT does not affect that profitability.

*Comment 7:* The respondent argues that if profit is considered an appropriate part of U.S. value added, the Department should include movement charges and duties associated with transporting CPTS to the U.S. as a part of the cost of manufacture of the CPT for purposes of calculating CPT profit. Furthermore, the Department should not add any profit attributable to CTV selling expenses to the value added since section 772(e)(3) limits the application of increased value to the process of manufacture or assembly performed on the imported merchandise.

Petitioners argue the Department should not allocate profit to CPT movement costs because these are costs attributable to the production of the CTV in the U.S., not to the production of the CPT. Furthermore, profit arising from selling expenses is properly a part of value added because the amount of profit earned on the sale of a CTV is directly affected by the cost to make it and the cost to sell it.

*DOC Position:* We agree with the respondent that section 772(e)(3) of the statute limits the value added deduction from U.S. price to any increased value including additional material and labor resulting from the process of manufacturing or assembly. Material and labor were specifically identified as elements of increased value. Not only were selling expenses not contemplated as elements of increased value, they were specifically provided for in section 772(e)(2) which calls for the deduction of expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise. Therefore, we did not include in the value added to the CPT in the U.S. any profit attributable to CTV selling expenses.

We also agree with the respondent that CPT movement costs should be included as CPT costs in the allocation of profit to CPTs. Such costs are incurred prior to importation while the value added provisions apply to any increase in value made after importation.

*Comment 8:* Petitioners argue that in making its final calculations, the Department should include the U.S. exporter sales price sales which respondent claims involved damaged CTVs. They contend that Hitachi has not established that the merchandise was damaged or that the sales were not made in the ordinary course of trade.

*DOC Position:* We disagree. We verified that the sales in question involved damaged merchandise. We have not considered them in making this determination.

*Comment 9:* Petitioners argue that home market packing and inland freight should be reduced by the amount of profit earned by Hitachi Express, Pte., Ltd. on the services it provided the respondent because the two companies are related.

*DOC Position:* The question is mott. Since the home market and U.S. packing charges and inland fright were identical, the profit earned by the related company that packed Hitachi's CPTs was included in both home market and U.S. packing charges.

*Comment 10:* Petitioners note that U.S. import statistics during the period of investigation show the entry of over 127,000 incomplete television receivers

from Singapore, far in excess of the number of CPTs reported as Hitachi's U.S. sales. Since Hitachi is the only known producer of CPTs in Singapore, petitioners conclude that it is possible that Hitchi's unrelated home market customers shipped Hitachi CPTs to the U.S. Petitioners maintain that, were this the case, Hitachi either knew or should have known the ultimate destination was the U.S. Therefore, Hitachi's home market sales to unrelated customers should not be used as a basis of foreign market value.

*DOC Position:* Because all home market sales of the identical or most similar model were made to related customers, we have used only sales to related customers in determining foreign market value.

*Comment 11:* Petitioners argue that the Department should not include royalty expenses associated with U.S. exporter's sales price sales in production costs if the royalty expense is directly related to sales.

*DOC Position:* Since the royalties were paid for technical and production related expertise, these costs were included in the cost of production.

*Comment 12:* Petitioners argue that the credit expense on U.S. exporter's sales price transactions were improperly reported. They note that respondent averaged all credit expenses for all CTV customers rather than reporting actual credit expense on a sale-by-sale basis and based the average on the entire fiscal year rather than on the period of investigation.

*DOC Position:* While we would prefer to make credit adjustment on a sale-by-sale basis, this is not always possible. In this instance, we found that the respondent's method of allocating its accrued credit expense was reasonable because records of its individual sales are maintained at its selling office across the United States and because our review of selected invoices confirmed the accuracy of the accural method of accounting for credit expenses. The average age of accounts receivable used was verified to have been based only on the period of investigation, not the entire fiscal year. For this reason, we have accepted the credit expense reported by the respondent.

*Comment 13:* The petitioners argue that the respondent improperly reported the advertising expense on U.S. exporter's sales price transactions by allocating total adversiting expense to all products on the basis of sales value rather than reporting the actual, model-specific expense for the products under investigation.

*DOC Position:* While we agree in principle with the petitioners, the allocation methodology employed by the respondent is reasonable since the respondent's accounting records for advertising expense are not maintained on a product-specific basis. We verified that all of the products to which total advertising expense was allocated were consumer goods sold through channels similar to those for CTVs and that each category of advertising expense related to all products.

*Comment 14:* Petitioners argue that the Department should impute a freight charge for U.S. exporter's sale price transactions because the respondent allocated the freight expense improperly on the basis of sale value rather than volume or weight.

*DOC Position:* We agree in principle with the petitioners. However, the facts of this case necessitate our acceptance of the allocation of the freight-out expense on the basis of sales value rather than volume. We verified that each of the respondent's shipments contained a variety of products, the mix varying from customer to customer. The freight invoices the respondent received generally did not itemize charges for shipments covered. Given the complexity of calculating freight on any other basis, we accepted the allocation based on sales value.

*Comment 15:* Petitioners argue that the discounts and rebates granted on U.S. exporter's sales price transactions should be recalculated on a sales-specific basis rather than on an average basis. Hitachi argues that reporting sale-by-sale amounts would have been an enormous burden given the number of exporter's sales price transactions and the fact that many of the sales records are kept in regional offices throughout the country. Hitachi further views petitioners' objection to averaging for U.S. prices as only a one-sided argument.

*DOC Position:* We agree with the petitioners that the most accurate reporting of these discounts and rebates would be on the basis of individual sales. However, given the burden of reporting the amounts for each sale, we have determined that the averaging of these discounts and rebates closely approximates their effect on Hitachi's sales prices. In addition, at verification the total amounts reported for each category were tied to Hitachi's audited profit and loss statements, demonstrating the reliability of the discounts and rebates reported.

*Comment 16:* Petitioners argue that because the amount of volume rebate reported for U.S. exporter's sales price sales was verified to have been understated, the volume rebate should be recalculated based on the expenses actually incurred during the period of investigation.

The respondent contends that, although it was not mentioned in the Department's verification report of Hitachi Sales Corporation of America, the discrepancy between the amount of volume rebate reported and the actual amount incurred was explained during verification. The amount reported was based on the expense accrued during the period of investigation. The total amount accrued for the fiscal year was compared to the actual expense for the year. The difference noted in the verification report was due to an extraordinarily large payment being made prior to the period of investigation. For the period of investigation the actual and accrued amounts for the volume rebate were virtually identical. Therefore, the amount reported was accurate.

*DOC Position:* We agree with the respondent. The volume rebate was accurately reported.

*Comment 17:* Petitioners argue that flooring expenses incurred in U.S. exporter's sales price sales are a direct selling expense rather than an indirect selling expense as claimed by Hitachi and should be deducted from the U.S. price.

*DOC Position:* We agree. As was stated in the Department's verification report, the flooring expense is an expense paid to companies who finance purchases of CTV customers. Therefore, we have treated it as a direct selling expense.

*Comment 18:* Petitioners contend that Hitachi undereported its selling expenses by including service revenue in the denominator (total sales) of the ratio used to allocate expenses to the CTVs sold.

*DOC Position:* We disagree. The total sales amount used as a denominator in the ratio did not include service revenue but reflected only "goods sold."

*Comment 19:* Petitioners assert that the respondent underreported the selling expenses on U.S. exporter's sales price transactions by failing to report the selling expenses that the parent company incurs on behalf of its related U.S. sales office. Respondent claims that no such expenses are incurred.

*DOC Position:* During verification we found no evidence of Hitachi Sales Corporation of America's parent company incurring any expenses on U.S. exporter's sales price transactions.

*Comment 20:* Petitioners contend that all parent company expenses incurred in establishing and administering Hitachi's

worldwide supply network of manufacturing and distribution facilities should be included in CTV costs. Respondent argues that all members of the Hitachi family conduct business with one another on a strictly arm's length basis and the transfer prices and production costs reported were complete.

*DOC Response:* The Department includes all costs necessary to produce the merchandise under investigation. In the submission, Hitachi, Ltd's general and administrative expense had not been allocated to the chassis or CTV. For the final determination, we have allocated general and administrative expense incurred by Hitachi, Ltd. to these items on a cost of sales basis.

*Comment 21:* Petitioners argue that the Department should include inventory write-offs of obsolete parts in the cost of production since they represent expenses incurred in producing the product.

*DOC Response:* The Department allocated a portion of write-offs recorded by Hitachi Consumer Products of America's plant to the cost of production of the CTV since they were considered to be costs incurred to produce the products. The Department agrees that obsolete parts are expenses incurred in normal operations which must be absorbed by current production.

*Comment 22:* Petitioners assert that the respondent failed to report the cost of packing completed CTVs and that these costs must be added in the value added adjustment.

*DOC Position:* The respondent reported packing costs for the CTV separately from the CTV cost of production. In making this determination the Department recalculated the CTV packing costs and included them in the CTV cost of production.

*Comment 23:* Petitioners assert that Hitachi under-reported production costs by failing to include the administrative costs incurred in CTV component distribution by related trading houses. Respondent maintains that no trading houses were involved in the transactions in this case.

*DOC Response:* Where applicable the costs incurred by the trading houses for the chassis and the CPTs were considered to be part of the costs of these components. The CTVs which were produced with CPTs from Singapore did not utilize the Hitachi, Hong Kong trading houses to transport CTV components to the United States.

*Comment 24:* Petitioners claim that Hitachi understated R&D expenses since it allocated neither general nor product-specific R&D expenses incurred by Hitachi Ltd. to the chassis or to other component production costs. They argue that, in addition to factory level R&D for CPT production, the expenses of parent and/or subsidiary R&D should be included. Respondent argues that the R&D incurred in developing component parts is covered by the royalty payments made by related companies to Hitachi.

*DOC Response:* The Department captures all costs necessary to produce the CPT. General on-going R&D was considered to be a necessary part of these costs. In is submission, Hitachi, Ltd.'s general R&D was not allocated to the CPT chassis or CTV. Therefore, R&D expense incurred by Hitachi, Ltd. was allocated to these items on a cost of sales basis.

*Comment 25:* Respondent argues that in calculating CTV cost at the preliminary determination, the Department mistakenly doublecounted certain costs incurred by Hitachi which are associated with the packing and shipping of CPTs and other CTV components. Respondent requests that this double counting be eliminated in the final determination.

*DOC Response:* Hitachi had included shipping and other movement charges in the costs items listed as "miscellaneous" in its submission. During verification we discovered that such costs had been included in the cost of production reported by the respondent. Therefore, for the final determination the Department excluded the charges reflected in the cost of production for all components, recalculated the charges for the chassis and yoke and added these new charges to the cost of production. For the CPT adjustments, the specific sales charges reported were used.

*Comment 26:* Respondent argues that the Department should not include an amount for interest expense in its calculation of the cost of production of the CPT. They claim that Hitachi had no net interest expense during the period for which cost information was provided.

*DOC Response:* The Department used the methodology described under § 353.10(e)(3) of the "U.S. Price Calculation" section of this notice. Because Hitachi's interest expense is very low, this methodology resulted in only inventory carrying costs and credit costs related to sales being included as financial expenses in the cost of production.

*Comment 27:* Respondent argues that the Department should calculate and publish separate rates for purchase price and exporter's sales price transactions. They contend that, since purchase price transactions are sales of CPTs to unrelated OEM customers, and exporter's sales price transactions involve CPTs imported by a Hitachi family company for use in the production of CTVs, it would be inappropriate to average margins on sales having such diverse marketing conditions. Petitioners argue that there is only one class or kind of merchandise under investigation which is CPTs, and it is Department practice to calculate one margin for the class or kind of merchandise whether the sales are purchase price or exporter's sales price.

*DOC Position:* Consistent with our past practice for fair value investigations, we are publishing a single antidumping duty rate for each firm investigated.

*Comment 28:* The respondent contends that the Department erred in its preliminary determination by including an imputed inventory carrying cost for finished CTVs in the indirect CTV selling expenses because: (1) Inventory carrying cost is included in the cost of manufacture as a general expense found in accounts such as building depreciation, electricity and other expenses; (2) it is improper and contrary to the Department's policy to impute opportunity costs since they are theoretical rather than actual costs; and (3) under 19 CFR 353.15(d) the Department lacks the authority to impute indirect selling expenses as differences in circumstances of sale.

*DOC Position:* We disagree. The inventory carrying costs at issue are an imputed interest expense measuring the financial costs of holding inventory over time. As such, these costs would not be included in building depreciation, electricity, or other expenses in the cost of manufacturing. To the extent that a company has borrowed funds to finance its holding of inventory, we have reduced those interest expenses by the imputed inventory carrying costs.

It has been the Department's practice to impute inventory carrying costs in exporter's sales price situations. We do not believe these costs are theoretical because a company is foregoing sales revenue as long as the merchandise is in inventory. We have not treated these inventory carrying costs as circumstances of sale selling expenses but as indirect selling expenses under § 353.10(e)(2) of the Commerce Regulations.

*Comment 29:* Petitioners note that due to the failure of the respondent to report properly some home market sales where the date of sales was altered by a price change quotation, the home market sales listing was verified as incomplete. Petitioners maintain that the

Department should obtain information on all such price adjustments.

*DOC Position:* On August 17, 1987, the respondent submitted a corrected home market sales listing which we are satisfied completely reports all of the sales at issue.

*Comment 30:* Petitioners argue that Hitachi should not be allowed to increase either the packing or inland freight charges of home market CPTs by including the cost of transportating CPTs to the warehouse.

*DOC Position:* This issue is moot. In the revised sales listing submitted October 9, 1987, neither home market packing nor inland freight were increased.

*Comment 31:* Petitioners argue that the respondent's claim for inland insurance in Singapore should be denied because payment of the insurance premiums could not be verified. The respondent maintains that, although the premium has not been paid, Hitachi is nonetheless liable for payment and the charge is, therefore, justified.

*DOC Position:* We have granted the claim for home market inland insurance. We verified that the insurance contract was in force at rates corresponding to those reported. We assume that Hitachi is liable for payment of the premium and thus has incurred the expense.

*Comment 32:* Respondent argues that, despite comments to the contrary in the verification report, the indirect selling expenses of Hitachi Electronic Components, Ltd. (Singapore Office) (HITEC) were not overreported. In particular, the respondent contends that HITEC's payment to its parent office in Hong Kong was properly included in the indirect selling expenses because that office performs administrative services which are essential to all HITEC operations, including CPT sales.

*DOC Position:* We disagree. During verification we discovered that several expense items which were related exclusively to semiconductor sales had been included in the total indirect selling expenses which were allocated to CPTs. We also established that the Hong Kong office sells only semiconductors. The respondent was unable to provide any evidence that the operations of the Hong Kong office were related to CPT sales. Therefore, we have denied the respondent's claim and have recalculated the home market indirect selling expenses accordingly.

### Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of CPTs from Singapore that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

| Manufacturer/producer/exporter | Weighted-average margin percentage |
|---|---|
| Hitachi Electronic Devices, Pte., Ltd. | 5.33 |
| All others | 5.33 |

### ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on CPTs from Singapore entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

November 12, 1987.

**Gilbert B. Kaplan,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 87-26592 Filed 11-17-87; 8:45 am]

BILLING CODE 3510-DS-M

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[C-559-701]

## Initiation of Countervailing Duty Investigation; Carbon Steel Wire Rod From Singapore

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Singapore of carbon steel wire rod, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before January 15, 1988.

**EFFECTIVE DATE:** November 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0161.

**SUPPLEMENTARY INFORMATION:**

### The Petition

On October 22, 1987, we received a petition in proper form from Armco, Inc., Atlantic Steel Co., Georgetown Steel Corp. and Raritan River Steel Co., filed on behalf of the U.S. industry producing carbon steel wire rod. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Singapore of carbon steel wire rod receive, directly or indirectly, certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Since Singapore is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303(a)(1) and 303(b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise from Singapore materially injure, or threaten material injury to, a U.S. industry.

### Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on carbon steel wire rod from Singapore and have found that the petition meets these requirements.

We conducted a previous investigation of the subject merchandise from Singapore and made a negative final determination (51 FR 3357, January 27, 1986). In the current petition, petitioners have asked us to investigate programs which were determined to be not used in the earlier negative final determination. Given that (1) many of those programs provided benefits based on export performance and (2) exports of carbon steel wire rod have increased significantly since the previous investigation, we have determined that a new investigation is warranted.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Singapore of carbon steel wire rod, as described in the "Scope of Investigation" section of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination on or before January 15, 1988.

**Scope of Investigation**

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

For purposes of this investigation, the term "carbon steel wire rod" covers coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch in diameter, nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Wire rod is currently classifiable under items 607.1400, 607.1710, 607.1720, 607.1730, 607.2200, and 607.2300 of the *TSUSA* and under HS item numbers 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00 and 7213.50.00.

**Allegations of Bounties or Grants**

Petitioners list a number of practices by the government of Singapore which allegedly confer bounties or grants on manufacturers, producers or exporters in Singapore of carbon steel wire rod. We are initiating an investigation on the following programs:

- Economic Expansion of Incentives Act (EEIA).

—Part IV, Tax Exemption for Increased Export Profits
—Part IV A, Tax Exemption for Approved Export Trading Companies
—Part VI B, Tax Exemption for Investment in Export Warehouses

- Double Deduction of Export Promotion Expenses.

Although not specifically alleged by petitioners, we are also investigating whether the carbon steel wire rod industry in Singapore receives certain countervailable benefits under programs which we have previously determined to be countervailable or which we found not to be used in *Final Negative Countervailing Duty Determination: Carbon Steel Wire Rod from Singapore* (51 FR 3357, January 27, 1986):

- Other Tax Exemptions under EEIA.

—Part II, Tax Exemptions for "Pioneer Enterprises"
—Part III, Tax Exemption for Expansion of Established Enterprises
—Part V, Tax Exemption for Interest on Approved Loans from Foreign Lenders
—Part VI, Tax Exemption for Royalties and Technical Assistance Fees Paid to Foreigners
—Additional Tax Exemptions and Extention of Existing Tax Exemptions for Research and Development (R&D).

- Loans from the Monetary Authority of Singapore and the Development Bank of Singapore Working Capital Loan Fund
- Singapore Economic Development Board.

—Capital Assistance Scheme
—Product Development Assistance Scheme

We are also investigating whether the carbon steel wire rod industry in Singapore received benefits under the following programs which have not been alleged or previously investigated.

- Singapore Economic Development Board.

—Initiatives in New Technologies
- Double Deduction for R&D.

This notice is published pursuant to section 702(c)(2) of the Act.

**Gilbert B. Kaplan,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 87-26588 Filed 11-17-87; 8:45 am]

BILLING CODE 3510-DS-M

## Automated Manufacturing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held December 9, 1987, 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street & Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

**Agenda**

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of Numerically Controlled Machines.
4. Discussion of Programmable Controllers.
5. Discussion of TAC Committee Communications.
6. Discussion of CAD/CAM Software.
7. Discussion of Shop Floor Computers/Controllers.

**Executive Session**

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to

open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at 202/377–4959.

Date: November 13, 1987.

**Betty Anne Ferrell,**

*Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.*

[FR Doc. 87–26571 Filed 11–17–87; 8:45 am]

BILLING CODE 3510–DT–M

## Fiber Optics Subcommittee, Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Fiber Optics Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held December 8, 1987, 2:30 p.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue NW., Wash., DC. The Fiber Optics Subcommittee was formed to study fiber optic communications equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

**Agenda**

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.

**Executive Session**

3. Discussion of matters properly classified under Executive 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at (202) 377–4959.

Date: November 10, 1987.

**Dan Hoydysh,**

*Acting Director, Office of Technology & Policy Analysis.*

[FR Doc. 87–26573 Filed 11–17–87; 8:45 am]

BILLING CODE 3510–DT–M

## Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held December 9, 1987, 9:30 a.m., Room 3708, at the Herbert C. Hoover Building, 14th Street and Constitution Avenue NW., Washington, DC. The Switching Subcommittee was formed to study computer controlled switching equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

**Agenda**

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.

**Executive Session**

3. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Susnshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Betty Ferrell at (202) 377–4959.

Date: November 10, 1987.

**Dan Hoydysh,**

*Acting Director, Office of Technology and Policy Analysis.*

[FR Doc. 87–26574 Filed 11–17–87; 8:45 am]

BILLING CODE 3510–DT–M

## Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held December 8, 1987, 9:30 a.m., Room 6802, at the Herbert C. Hoover Building, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

**Agenda**

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.

**Executive Session**

3. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for

Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Betty Ferrell at (202) 377–4959.

Date: November 10, 1987.

**Dan Hoydysh,**

*Acting Director, Office of Technology and Policy Analysis.*

[FR Doc. 87–26572 Filed 11–17–87; 8:45 am]

BILLING CODE 3510-DT-M

## National Oceanic and Atmospheric Administration

### Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will convene separate public meetings at the Sheraton on the Lake, 3838 North Causeway Boulevard, Metairie, LA, as follows:

*Council:* Will convene December 2, 1987, at 8:30 a.m., to discuss committee reports, including taking final action to approve Federal plans to manage shrimp and billfish; review new stock assessment information on red drum and consider management of this fishery (the public may testify on these issues); recess at 5 p.m., and reconvene December 3 at 8:30 a.m. to review data which indicate that the recreational quotas of the Gulf king and Spanish mackerals will be exceeded in December, and consider action to close these fisheries; adjournment is at noon.

*Committees:* The Red Drum Management Committee will convene November 30, 1987, at 1 p.m. and adjourn at 5 p.m.; the Billfish Management Committee will convene December 1 at 8 a.m., followed by meetings of the Habitat Protection, Budget, Shrimp Management and Reef Fish Management Committees; adjournment is at 5 p.m.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: November 12, 1987

**Richard H. Schaefer,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 87–26598 Filed 11–17–87; 8:45 am]

BILLING CODE 3510-22-M

### North Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council and its advisory entities will convene separate public meetings at the Anchorage Hilton Hotel, Anchorage, AK, as follows:

*Council:* Will convene December 8 at 9 a.m., to make final decisions on groundfish harvest levels for 1988 and apportionments to U.S. and foreign fisheries. There will be a major review of foreign allocations, vessel permits, and joint ventures for the next year. On December 9 the Council will convene a closed session (not open to the public) during lunch to consider Advisory Panel nominations. Other items on the agenda include final decisions on allocative measures in the halibut fishery, consideration of bycatch management measures recommended by the Council's Bycatch Management Committee, consideration of requests to change the sablefish opening date in the Gulf of Alaska and to raise the optimum yield in the groundfish fisheries in the Bering Sea and Aleutian Islands. The Council also will receive reports on domestic and foreign fisheries, enforcement activities by the U.S. Coast Guard, and a progress report on their pilot domestic observer program. The Council meeting may continue into December 12, if necessary.

*Advisory Entities:* The Scientific and Statistical Committee will convene a public meeting on December 6 at 1:30 p.m.; the Permit Review Committee and the Advisory Panel will convene public meetings December 6 at 2:30 p.m., and December 7 at 10 a.m., respectively. The Council's Advisory Panel Nominating Committee, Crab Management, Observer, and Finance Committees also will meet during the week, times and dates will be announced later. Other Plan Team and Workgroup meetings may also be held on short notice during the week.

For further information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: November 12, 1987.

**Richard H. Schaefer,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 87–26599 Filed 11–17–87; 8:45 am]

BILLING CODE 3510-22-M

## Patent and Trademark Office

### Extension of Previously-Granted Interim Orders Under the Semiconductor Chip Protection Act of 1984

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Notice of initiation of proceeding.

**SUMMARY:** By Amendment 2 to Department Organization Order 10–14, the Secretary of Commerce has delegated the authority under section 914 of the Semiconductor Chip Protection Act of 1984 (SCPA) to make findings and issue orders for interim protection of mask works to the Assistant Secretary and Commissioner of Patents and Trademarks. Guidelines for the submission of petitions for the issuance of interim orders were published on No November 7, 1984, in the **Federal Register**, 49 FR 44517–9, and on November 13, 1984, in the *Official Gazette*, 1048 O.G. 30.

Following these procedures, 18 interim orders have been granted to Japan, Australia, Sweden, Switzerland, Canada, Finland and the twelve members of the European Communities (EC). By order of the Commissioner of Patents and Trademarks the expiration date for all of the interim orders was extended to November 8, 1987, the date on which the Secretary's interim authority was to terminate under the SCPA. *See* 51 FR 30690 (August 28, 1986). On November 9, 1987, the Semiconductor Chip Protection Act Extension of 1987, which extends the Secretary's authority until July 1, 1991, was signed into law. This proceeding is being initiated in order to review the further progress that has been made toward establishing legal measures for the protection of semiconductor chips in those countries to which interim protection has been extended. Comments are solicited, and a hearing is scheduled. Based upon the record, the

Commissioner, on a case-by-case basis, will determine whether to extend the orders or to recommend that the President extend protection by a proclamation pursuant to section 902 of the SCPA.

Because of the late date at which legislation to extend the Commissioner's authority was passed, the existing orders would have expired before a hearing could be scheduled and the information disclosed at the hearing could be evaluated. Thus, to promote the development of international comity in the protection of mask works, all of the interim orders are hereby extended to expire on May 31, 1988, a period sufficient to permit foreign countries and organizations to prepare materials explaining the situation in their countries.

**DATES:** Comments and requests to testify must be received in the Office of the Commissioner of Patents and Trademarks before 5:00 P.M. on March 2, 1988. A public hearing has been scheduled for March 16, 1988, at 1:00 P.M.

**ADDRESSES:** Address written comments to: Commissioner of Patents and Trademarks, Attention: Assistant Commissioner for External Affairs, Box 4, Washington, DC 20231. The hearing will be held in the Commissioner's Conference Room, 9th Floor, Crystal Park Building 2, 2121 Crystal Drive, Arlington, Virginia.

Materials submitted and a transcript of the hearing will be available for public inspection in the Office of the Assistant Commissioner for External Affairs, 9th Floor, Crystal Park Building 2, 2121 Crystal Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557-3065 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** Chapter 9 of title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

> A series of related images, however, fixed or encoded
>
> (A) Having or representing the predetermined, three-dimensional pattern of metallic, insulating or semi-conductor material present or removed from the layers of a semiconductor chip product; and
>
> (B) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 further provides for a 10-year term of protection for original mask works measured from their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection.

Foreign mask works are eligible for protection under this chapter under basic criteria set out in section 902; first, that the owner of the mask works is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of the mask works to which the United States is also a party, or a stateless person wherever domiciled; second, that the mask work is first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> A foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

Although this chapter generally does not provide protection to foreign owners of mask works unless the works are first commercially exploited in the United States, it is contemplated that foreign nationals, domiciliaries, and sovereign authorities may obtain full protection if their nation enters into an appropriate treaty or enacts mask works protection legislation. To encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries and sovereign authorities of foreign nations if the Secretary finds:

> (1) That the foreign nation is making good faith efforts and reasonable progress toward—
>
> (A) Entering into a treaty described in section 902(a)(1)(A), or
>
> (B) Enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and
>
> (2) That the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and
>
> (3) That issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

In remarks in the *Congressional Record* of October 3, 1984, at page S12919 and of October 10, 1984, at page E4434, both Senator Mathias and Representative Kastenmeier suggested that "[i]n making determinations of good faith efforts and progress * * *, the Secretary should take into account the attitudes and efforts of the foreign nation's private sector, as well as its Government. If the private sector encourages and supports action toward chip protection, that progress is much more likely to continue * * *. With respect to the participation of foreign nationals and those controlled by them in chip piracy, the Secretary should consider whether any chip designs, not simply those provided full protection under the Act, are subjected to misappropriation. The degree to which a foreign concern that distributes products containing misappropriated chips knows or should have known that it is selling infringing chips is a relevant factor in making a finding under section 914(a)(2). Finally, under section 914(a)(3), the Secretary should bear in mind the role that issuance of the order itself may have in promoting the purposes of this chapter and international comity."

Pursuant to these procedures, interim orders have been issued for Japan (50 FR 24668), Sweden (50 FR 25618), Australia, the United Kingdom and the Netherlands (50 FR 26818), Canada (50 FR 27649), Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy and Luxembourg (50 FR 37892), Spain and Portugal (51 FR 30690), Switzerland (52 FR 12445), and Finland (52 FR 42127).

On March 24, 1986, the Commissioner requested comments on existing interim orders in order to evaluate progress in the affected countries toward establishing regimes of protection for mask works, and to determine whether to extend the orders. *See,* 51 FR 30690. A public hearing was held on July 9, 1986, at which witnesses from the Electronic Industries Association of Japan, Sweden, the European Communities, and the Semiconductor Industry Association testified. Written comments

were received from all countries for which orders had been issued.

The rapid developments in establishing a regime of international protection for mask works are a matter of public record. The World Intellectual Property Organization is considering the development of a new multilateral agreement for the protection of integrated circuit designs. In Japan, an *Act Concerning the Circuit Layout of a Semi-conductor Integrated Circuit* which automatically makes all foreign mask works eligible for protection in Japan became effective on January 1, 1986. The Swedish *Act on the Protection of the Circuitry in Semiconductor Products* became effective on April 1, 1987, and U.S. mask works were proclaimed as eligible for protection under that act until November 8, 1987. The Council of the European Communities passed it *Council Directive on the Legal Protection of Original Topographies in Semiconductors* on December 1, 1986, which requires member States to adopt legislation for the protection of semiconductor designs by November 7, 1987.

The Commissioner found that substantial progress had taken place in each country since the original orders were issued, and ordered that each of the orders be extended until November 8, 1987, the date on which the Secretary's interim authority was to expire under the terms of the SCPA. Original interim orders were also issued at that time for Spain and Portugal on the basis of their membership in the European Community and becoming therefore subject to the directive. *See*, 51 FR 30690 (August 28, 1986). An interim order was issued for Switzerland on April 16, 1987, and for Finland on October 21, 1987. On November 9, 1987, the Semiconductor Chip Protection Act Extension of 1987, which extends the Secretary's authority to issue interim orders pursuant to section 914 of the SCPA until July 1, 1991, was signed into law.

In light of these developments, we are initiating this proceeding to determine whether the public interest in increased international protection for semiconductor chip designs will be served by the further extension of existing interim orders by recommending that the President extend protection by a proclamation pursuant to section 902 of the SCPA.

To be considered, comments and requests to testify must be received by 5:00 P.M., March 2, 1988, by the Commissioner of Patents and Trademarks. Comments received will be available for public inspection in the Office of the Assistant Commissioner for External Affairs, 9th Floor, Crystal Park Building 2, 2121 Crystal Drive, Arlington, Virginia.

**Order Extending the Expiration Date for Interim Protection Orders Issued Under Chapter 9, Title 17, United States Code**

In accordance with the authority vested in me by Amendment 2 to Department Organization Order 10-14 regarding 17 U.S.C. 914, and based upon the record of this proceeding, I find that: Japan, Sweden, Australia, Canada, Belgium, Denmark, the United Kingdom, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Switzerland and Finland are making and continuing to make good faith efforts toward enacting legislation that will be in compliance with 17 U.S.C. 902(a)(2); nationals, domiciliaries, and sovereign authorities of those countries and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, the existing interim orders for Japan, Sweden, Australia, Canada, Belgium, Denmark, the United Kingdom, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Switzerland and Finland are extended and shall terminate on May 31, 1988.

**Donald J. Quigg,**

*Assistant Secretary and Commissioner of Patents and Trademarks.*

Date: November 9, 1987.

[FR Doc. 87-26576 Filed 11-17-87; 8:45 am]

BILLING CODE 3510-16-M

## COMMISSION ON EDUCATION OF THE DEAF

### Educational Programs for the Deaf; Meetings

**AGENCY:** Commission on Education of the Deaf.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to Pub. L. 92-463, notice is hereby given of forthcoming meetings of the Commission on Education of the Deaf and its Committees. The purposes of the Commission and Committee meetings are to address the need for a clearinghouse, and to review comments and counterproposals received in response to the second set of draft recommendations. These meetings will be open to the public.

**DATES:** December 1, 1987, 8:30 a.m. to 5:00 p.m.; December 2, 1987, 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** All meetings will be held in the GSA Regional Office Building, 7th and D Streets SW., Washington, DC. On Tuesday morning, the Precollege Committee will meet in Room G210, and the Postsecondary Committee in Room 6646. On Tuesday afternoon and Wednesday, all meetings will be in Room 6646.

**FOR FURTHER INFORMATION CONTACT:** Monica Hawkins, Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets SW., Washington, DC 20407. (202) 453-4353 (TDD) or (202) 453-4684 (Voice). These are not toll free numbers.

**SUPPLEMENTARY INFORMATION:** The Precollege Committee will meet Tuesday, December 1, from 8:30 a.m. to 12:00 noon in Room G210 to discuss comments received on the Captioned Films Program, the Model Secondary School for the Deaf (MSSD), the Kendall Demonstration Elementary School (KDES), language acquisition, early intervention, educational technology, professional certification, recognition of American Sign Language, and the role and impact of research at MSSD and KDES. The Committee will also continue previous discussion on Least Restrictive Environment and appropriate education, and review findings. The Postsecondary Committee will meet at the same time in Room 6646 to discuss comments received on the proposed service centers for deaf adults, training programs for rehabilitation counselors, adult and continuing education, the Department of Education's liaison officer for federally funded postsecondary programs, evaluation of Gallaudet University and the NTID, membership of the Gallaudet University Board of Trustees, the NTID's National Advisory Group, and similar governing bodies at the RPEPD, funding of research at GU, and affirmative action. From 1:00 p.m. to 5:00 p.m. that afternoon, the Joint Committee will meet in Room 6646 to review comments on the draft recommendations relating to the funding mechanism at the Department of Education for captioning, funds for research on technology, assistive devices centers, national symposia on educational technology, educational interpreting, American Sign Language, and minority education. The Committee will also consider development of recommendations on needs of education in rural areas and the need for a clearinghouse.

Wednesday, December 2, the Executive Committee will meet from 8:30 a.m.–9:30 a.m. in Room 6646 to discuss plans for February 4th, the date of submission of the Report, and promotional plans for the February through May period. The Executive Committee meeting will close briefly while a personnel matter is discussed. The Joint Committee will meet from 10:00 a.m. to 12:00 noon in Room 6646 to engage in discussion with Congressional staff on the Commission's recommendations. The Joint Committee will reconvene from 1:00 p.m.–3:00 p.m. in Room 6646 to continue its Tuesday afternoon meeting and may also discuss the proposed Office on Deafness in the Office of the Assistant Secretary of OSERS. The full Commission will meet from 3:00 p.m. to 5:00 p.m. in Room 6646. The proposed agenda for the Commission meeting on December 2 includes the following:

I. Approval of minutes.
II. Reports.
  Chairperson's Report
  Vice Chairperson's Report
  Executive Committee Chairperson's Report
  Precollege Committee Chairperson's Report
  Postsecondary Committee Chairperson's Report
  Staff Director's Report
III. New Business
IV. Agenda for January meeting
V. Adjournment

These meetings will be open to the public. Interpreters and captioning will be provided. If you need audio-loop systems or other special accommodations, please contact Monica Hawkins at (202) 453–4353 (TDD) or (202) 453–4684 (Voice) no later than November 23, 1987, 5:00 p.m. E.S.T. These are not toll free numbers.

Records will be kept of the proceedings and will be available for public inspection at the office of the Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets SW., Washington, DC.

**Pat Johanson,**

*Staff Director.*

[FR Doc. 87–26586 Filed 11–17–87; 8:45 am]

BILLING CODE 6820-SD-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Amending the Export Licensing System for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

November 12, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 13, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

**Background**

On February 28, 1984 a notice was published in the **Federal Register** (49 FR 7269) announcing the establishment of an export licensing system for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the People's Republic of China. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement on August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, agreement has been reached to further amend the existing export licensing system to include cotton, wool and man-made fiber textile products in the following merged and part categories, produced or manufactured in the People's Republic of China and exported to the United States on and after November 15, 1987:

*Merged Category*

300/301
310/318
347/348
445/446
645/646

| Part-category | Description |
|---|---|
| 359-D | Diapers. |
| 360-P | Pillowcases. |
| 360-O | Other. |
| 369-D | Dishtowels. |
| 369-S | Shoptowels. |
| 600-Y | Polyester Yarn (containing cotton). |
| 600-O | Other. |
| 604-A | Acrylic spun yarn. |
| 604-W | Acrylic spun yarn (containing wool). |
| 604-O | Other. |

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

November 12, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on February 23, 1984, as amended, by the Chairman, Committee for the Implementation of Textile Agreement, which established an export licensing system for certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China.

Effective on November 13, 1987, the directive of February 23, 1984, as amended, is hereby further amended to include the following merged and part-category designations:

*Merged Category*

300/301
310/318
347/348
445/446
645/646

| Part-category | TSUSA No. |
|---|---|
| 359-D | TSUSA number 384.5214. |
| 359-O | All TSUSA numbers in Category 359 except: Cotton coveralls (359-C) in TSUSAs 381.0822, 381.6510, 384.0928, 384.5222; Cotton diapers (359-D) in TSUSA 384.5214; Cotton infants' sets (359-I) in TSUSAs 384.0439, 384.0441, 384.0442, 384.0444, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.3451, 384.3452, 384.3453, 384.3454, 384.5162, 384.5163, 384.5167, 384.5169, 384.5172; Cotton vests (359-V) in TSUSAs 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.0652, 384.3449, 384.3450, 384.4300, 384.4421, 384.4422. |
| 360-P | TSUSA numbers 363.0108, 363.0112, 363.3020, 363.3025, 363.3060 and 363.3065. |
| 360-O | All TSUSA numbers except 363.0108, 363.0112, 363.3020, 363.3025, 363.3060 and 363.3065. |
| 369-D | TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860. |
| 369-S | TSUSA number 366.2840. |
| 369-O | All TSUSA numbers in Category 369 except: Cotton dishtowels (369-D) in TSUSAs 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860; Cotton handbags (369-H) in TSUSAs 706.3640 and 706.4106; Cotton luggage (369-L) in TSUSAs 706.3210, 706.3650 and 706.4111; Cotton shoptowels (369-S) in TSUSA 366.2840. |
| 600-Y | TSUSA number 310.6034. |
| 600-O | All TSUSA numbers in Category 600 except 310.6034. |
| 604-A | TSUSA number 310.5049. |
| 604-W | TSUSA number 310.6045. |
| 604-O | All TSUSA numbers in Category 604 except 310.5049 and 310.6045. |

Accordingly, you are directed to prohibit, effective for shipments of cotton and man-made fiber textile products entered for consumption or withdrawn from warehouse for consumption into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) on or after November 15, 1987, which have been produced or manufactured in China and exported on and after November 15, 1987 from China for which the Government of the People's Republic of China has not issued an appropriate export license and the correct merged category (e.g., 300/301) or subpart category designation (e.g., 359-D).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-26568 Filed 11-17-87; 8:45 am]

BILLING CODE 3510-DR-M

## COMMODITY FUTURES TRADING COMMISSION

### Agricultural Advisory Committee; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a) and 41 CFR 101-6.1015(b), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, DC headquarters located at Room 532, 2033 K Street, NW., Washington, DC 20581, on December 4, 1987, beginning at 9:00 a.m. and lasting until 3:30 p.m. The agenda will consist of:

**Agenda**

1. Remarks by Acting Chairman Kalo A. Hineman and Commissioner William E. Seale.
2. Update on CFTC—USDA Liaison Activities.
3. Report on Federal Speculative Limits.
4. Report on Hedging and Report on Risk Management Interpretations for Financial Instruments.
5. Discussion of Aggregation Issues.
6. Report on GAO Cattle Study.
7. Discussion of Livestock Issues With Wayne Purcell, Professor, Virginia Polytechnic Institutes and State University.
8. Report on Pricing Agricultural Options.
9. Discussion of Rule 1.59 and Educational Marketing Clubs.
10. Report on EFP Study.
11. Discussion of Off-Exchange Transactions.
12. Summary of Commodity Market Performance During Week of October 19-24.
13. Discussion of Other Issues for Potential Committee Consideration; Timing of Next Meeting; Other Committee Business.

The purpose of this meeting is to solicit the view of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on agricultural issues. The purposes and objectives of the Advisory Committee are more fully set forth in the May 13, 1987 second renewal charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner William E. Seale, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Agricultural Advisory Committee c/o Charles O. Conrad, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Mr. Conrad in writing at the latter address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on November 13, 1987.

**Jean A. Webb,**

*Secretary to the Commission.*

[FR Doc. 87-26613 Filed 11-17-87; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Priority Model (Environmental)

**AGENCY:** Office of Deputy Assistant Secretary of Defense (Environment), DoD.

**ACTION:** Notice for public comment period.

**SUMMARY:** The Department of Defense (DoD) has established a comprehensive Installation Restoration Program (IRP) to identify, evaluate, and remediate environmental problems associated with past disposal practices at DoD installations. The IRP is DoD's program to implement its remedial responsibilities under the Comprehensive Environmental Responses, Compensation, and Liability Act of 1980, (CERCLA) as amended by the Superfund Amendments and Reuthorization Act of 1986, (SARA). DoD is herein proposing to use a new

prioritization method, the Defense Priority Model (DPM), for relative ranking of IRP sites which require remedial action. The DMP will not be used as a substitute for the Environmental Protection Agency's (EPA) Hazard Ranking System (HRS) (40 CFR Part 300). The DoD anticipates that EPA will continue to apply the HRS to DoD facilities in order to determine whether sites should be proposed for the National Priorities List. In general, HRS is applied to sites for which relatively little information is available, e.g., after a preliminary assessment and/or site inspection (PA/SI) (40 CFR Part 300) is conducted. The DPM, however, will be applied to a site after a remedial investigation/feasibility study (RI/FS) (40 CFR Part 300) has been conducted and a large amount of data are available to characterize conditions at the site. DoD believes the relative priority of IRP sites can best be assessed with RI/FS data in hand. This announcement solicits public comment on DoD's planned use of the DPM as a rational tool to aid relative prioritization of sites requiring remedial action.

**DATE:** Comments should be received on or before February 16, 1988.

**ADDRESS:** Submit comments in duplicate to: Mr. Carl J. Schafer, Jr., Deputy Assistant Secretary of Defense (Environment), 206 N. Washington St., Suite 100, Alexandria, VA 22314–2528.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marcia W. Read, Office of the Deputy Assistant Secretary of Defense (Environment), 206 N. Washington, St., Suite 100, Alexandria, VA 22314–2528, telephone (202) 325–2211.

**SUPPLEMENTARY INFORMATION:** The Defense Priority Model (DPM) will be used to aid in the relative ranking of sites which have undergone evaluation by remedial investigation/feasibility study (RI/FS) procedures. The DPM will help assure that those sites which are of most environmental significance are addressed within the funding available from the Defense Environmental Restoration Account for remedial action (RA). The DPM and some of the factors contributing to DoD's desire to adopt such a system are described in further detail below.

### Discussion

In 1976, the DoD realized that contamination from industrial activities and past waste disposal practices existed on some DoD installations. In order to determine the extent of this problem and to mitigate the impacts of this contamination, the DoD initiated the Installation Restoration Program (IRP). The need and emphasis for this self-initiated program was reinforced by the passage of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the President's subsequent delegation of responsibility to the Secretary of Defense for response to releases from DoD controlled property in Executive Order 12316, Response to Environmental Damage.

The DoD IR program provides for evaluation of all DoD installations to identify contamination and to remediate potential threats to human health or the environment resulting from the contamination. Because of the large number of sites DoD-wide and the various stages of evaluation and design of remedial alternatives, it is not technically or economically feasible to initiate and complete remedial actions at all sites simultaneously. The DoD does, however, upon discovery, immediately initiate response actions at sites which pose an imminent and substantial endangerment to public health or the environment. DoD policy is to remediate those sites which pose the greatest potential for damage first. To assist DoD and individual military service program managers in assessing the hazard presented by sites on DoD property, the DoD has developed the DPM. Technical personnel in the military services will apply the DPM to site data to produce a score. This score, along with other pertinent information such as mission impact, community concerns, regulatory considerations and program efficiencies will be used to determine the relative priority of a remedial action project.

### Defense Priority Model

DPM scores sites based on three factors: The potential for contaminant transport (pathway sub-score), the characteristics and concentration of each contaminant (hazard sub-score) and the presence of potential receptors (receptor sub-score). Each site is presumed to have four pathway-receptor combinations—the surface water pathway to humans, the surface water pathway to ecological receptors, the ground water pathway to humans, and the ground water pathway to ecological receptors. The score for each pathway-receptor combination is computed by multiplying the appropriate sub-scores for the pathway, hazard, and receptor. The overall site score is computed as a root-mean-square (rms) average of these pathway-receptor combination scores. By using an rms algorithm instead of a weighted average, extra weight is given to pathway-receptor combinations with unusually high scores. Additionally, human health scores are weighted five times heavier than ecological receptor scores in DPM to assure high scores for sites which present the greatest hazard to humans. Also, if data for a site are incomplete, DPM will yield "false high" scores, further protecting receptors.

### Pathway Sub-scores

The pathway sub-score of DPM rates the potential for contaminants from a waste site to enter surface or ground waters. If contaminants from a site have already been detected in surface or ground water, a maximum score of 100 is assigned to that pathway. If no contamination has been detected, the potential for contamination from the site is calculated for both the surface water pathway and for the ground water pathway.

The surface water pathway sub-score calculation starts as a weighted sum of pathway characteristics based on:

1. Distance to nearest surface water.
2. Net precipitation.
3. Surface erosion potential.
4. Rainfall intensity.
5. Surface permeability.
6. Flooding potential.

It is multiplied by a containment factor since containment effectiveness is an important modifier of the potential for contaminants to enter water.

The ground water pathway sub-score calculation is parallel to the surface water sub-score calculation, but different characteristics are summed before the containment factor multiplier is applied. The characteristics are:

1. Depth to seasonal high ground water from the waste or contaminated zone.
2. Permeability of the unsaturated zone.
3. Potential for discrete features in the unsaturated zone to "short-circuit" the pathway to the water table.
4. Infiltration potential based on net precipitation and physical state of the waste.

### Contaminant Hazard Sub-scores

Defense Priority Model sub-scores for human health hazards and ecological hazards of identified contaminants are quantified on the basis of effects benchmarks. The DPM relies on the Registry of Toxic Effects of Chemical Substances (RTECS) to estimate benchmarks for human health effects and on national water quality criteria to estimate benchmarks for ecological effects. For regulated chemicals, benchmarks are the concentrations permitted by Environmental Protection Agency, the National Institute for Occupational Safety and Health or other federal regulations. In scoring a site,

state or local regulations will be used, if they are more stringent. For contaminants without regulatory standards, the benchmark has been estimated based on a relative potency concept. The DPM therefore relates measured concentrations to benchmark concentrations in order to identify sites with higher concentrations and ensure they receive higher scores.

Four separate hazard sub-scores are calculated for human health and ecological hazard via ground water and surface water; the same procedures are used for each combination.

For a site with measured water contamination health hazard scoring is based on the concept of Acceptable Daily Intake (ADI). The observed concentration of each contaminant is first converted to a daily ingestion intake (micrograms/day) and then divided by the appropriate benchmark (the estimated ADI). These quotients are summed over all contaminants and normalized to produce the health hazard sub-score.

A similar approach is used for ecological hazard scoring for a site with measured water contamination. The benchmarks for ecological effects are designed for protection of fresh water aquatic life and irrigation of crops. The assumption is made that such criteria also protect watered livestock. To score a site, observed concentrations are divided by the appropriate benchmark concentrations. These quotients are summed over all contaminants and normalized to produce the ecological hazard sub-score.

For a site where no contamination has been detected in surface or ground water, health hazard scores are assigned based on the ADI's. Bioaccumulation scores are assigned based on the benchmark for toxicity to aquatic and terrestrial biota.

**Receptor Sub-scores**

In DPM, a receptor sub-score is calculated for each of the four combinations of human or ecological receptors as influenced by contaminated surface or ground water. The scoring system is designed to assure that the receptor score approximates the actual risk posed by water contaminated at a site. Thus, receptors upstream or upgradient from a site have a much smaller influence on the receptor sub-score than do receptors located downstream or downgradient. For ground water, downgradient is defined as a 90 to 120 degree arc containing at its center the best estimate of the ground water flow direction as determined from available field data. Likewise, populations or receptors closer to the site affect the score more than populations or receptors further away because of the increased probability of contact with contaminated water.

The receptor sub-score for human health influenced by surface water is calculated as a weighted sum of the following factors:

1. Population that obtains drinking water from potentially affected surface water bodies.

2. Water use of nearest surface water bodies.

3. Population within 1000 feet (305 m) of the site.

4. Distance to nearest installation boundary.

5. Land use or zoning within 1 mile (1.6 km) of the site.

The receptor sub-score for ecological effects resulting from surface water is calculated as a weighted sum of the following factors:

1. Importance/sensitivity of biota and habitats in potentially affected surface water bodies nearest the site.

2. "Critical Environments" within 1 mile (1.6 km) of the site.

The receptor sub-score for human health influenced by ground water is calculated as a weighted sum of the following factors:

1. Estimated mean ground water travel time from current waste location to nearest downgradient water supply wells.

2. Estimated mean ground water travel time from current waste location to any downgradient surface water body that supplies water for domestic use or for food chain agriculture.

3. Ground water use of the uppermost aquifer.

4. Population potentially at risk from ground water contamination.

5. Population within 1000 feet (305 m) of the site.

6. Distance to nearest installation boundary.

The receptor sub-score for ecological effects resulting from ground water is calculated as a weighted sum of the following factors:

1. Estimated mean ground water travel time from current waste location to any down gradient habitat or natural area.

2. Importance/sensitivity of downgradient biota/habitats that are confirmed or suspected ground water discharge points.

3. "Critical Environments" within 1 mile (1.6 km) of the site.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

November 13, 1987.

[FR Doc. 87-26623 Filed 11-17-87; 8:45 am]

BILLING CODE 3810-01-M

## DELAWARE RIVER BASIN COMMISSION

### Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a pubic hearing on Tuesday, November 24, 1987 beginning at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:30 a.m. at the same location.

The subjects of the hearing will be as follows:

*Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact*

1. *Holdover Project: Pfizer Pigments, Inc. D-86-23.* An application to permit an existing discharge to contain up to 10,000 milligrams per liter (mg/1) (monthly average) of total dissolved solids (TDS). Existing docket approval (D-71-170) indicates the discharge would contain 1,000 mg/1 of TDS. The discharge of up to 0.95 million gallons per day (mgd) containing an average of 10,000 mg/1 of TDS would cause an increase of more than 33 percent in the receiving stream, Bushkill Creek, during periods of low flow and therefore the applicant has requested a waiver of that regulation. The applicant's wastewater treatment plant is located in the City of Easton, Northhampton County, Pennsylvania. The treatment plant effluent is discharged to Bushkill Creek at River Mile 184.1-2.55. Pfizer Pigments, Inc. has submitted an "Analysis of Alternatives" and an environmental impact study as the basis for the application. No increase in the approved 0.95 mgd discharge volume is requested. This hearing continues that of October 28, 1987.

2. *Township of Buckingham D-86-65 CP.* An application to construct sewage

treatment facilities adjacent to Mill Creek off Durhan Road in the Township of Buckingham, Bucks County, Pennsylvania. In addition to serving a portion of Buckingham Township, the proposed project is designed to serve a portion of Solebury Township and local septage haulers. Secondary treatment via a sequencing batch reactor process will be followed by spray irrigation over 42 acres leased from a commercial nursery stock. The proposed plant is designed to process an annual average flow of 0.236 mgd. During off-season months the treated wastewater will be discharged to Mill Creek.

3. *Darlington Woods Associates (Realty Engineering Developers, Inc.) D–87–36.* An application to construct a 0.15 mgd sewage treatment plant to serve a proposed housing development just north of Baltimore Pike in Chester Heights Borough, Delaware County, Pennsylvania. The proposed plant is designed to provide secondary treatment of domestic wastewater through the year 2007. The 382-unit Darlington Woods residential development will be served by two 0.075 mgd package sewage treatment units operating in parallel. Treatment plant effluent will be discharged to Chester Creek through an 8-inch diameter, P.V.C. outfall line.

4. *Philadelphia Electric Company D–87–63.* An overhead cable crossing to transmit 500 kV electric service across Skippack Creek in Skippack Township, Montgomery County, Pennsylvania. The proposed towers will be spaced about 700 feet apart immediately north of the applicant's existing 500 kV crossing of Skippack Creek. The project site is located in an area that has been included in the Comprehensive Plan as part of the Evansburg Reservoir and Recreation Project.

5. *Fleetwood Borough D–87–76 CP.* An application for approval of a ground water withdrawal project to supply up to 4.74 million gallons (mg)/30 days of water to the applicant's distribution system from new Well No. 9, and to increase the existing withdrawal limit from all wells from 11.4 to 13.5 mg/30 days. The project is located in Fleetwood Borough, Berks, County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

**Susan M. Weisman,**

*Secretary.*

November 9, 1987.

[FR Doc. 87–26530 Filed 11–17–87; 8:45 am]

BILLING CODE 6360–01–M

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before December 18, 1987.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster, (202) 732–3915.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) agency form number (if any); (4) frequency of collection; (5) the affected public; (6) reporting burden; and/or (7) recordkeeping burden; and (8) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 12, 1987.

**Carlos U. Rice,**

*Director for Information Technology Services.*

#### Office of Postsecondary Education

*Type of Review:* Revision

*Title:* Application to Participate in the State Student Incentive Grant Program

*Agency Form Number:* ED 1288

*Frequency:* Annually

*Affected Public:* State or local governments

*Reporting Burden:*

*Responses:* 57

*Burden Hours:* 171

*Recordkeeping:*

*Recordkeepers:* 0

*Burden Hours:* 0

*Abstract:* The State Student Incentive Grant Program uses matching Federal/State funds to provide a nationwide system of grants to help qualified college students. This application form is used to obtain, from State agencies, information the Department of Education needs to obligate program funds and for program management.

#### Office of Educational Research and Improvement

*Type of Review:* Extension

*Title:* Application for Basic Grants Under Library Services for Indian Tribes Program

*Agency Form Number:* G50–3p

*Frequency:* Annually

*Affected Public:* State or local governments

*Reporting Burden:*

*Responses:* 200

*Burden Hours:* 400

*Recordkeeping Burden:*

Recordkeepers: 0

*Burden Hours:* 0

*Abstract:* This form will be used by Indian Tribes and Hawaiian Natives to apply for Basic grants under the Library Services for Indian Tribes Program. The Department will use this information to make grant awards.

[FR Doc. 87–26531 Filed 11–17–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.116D]

## Invitation of Applications for New Awards Under the Comprehensive Program Final Year Dissemination Competition Conducted by the Fund for the Improvement of Postsecondary Education for Fiscal Year 1988

*Purpose:* Provides grants to institutions of postsecondary education and other public and private institutions and agencies to improve postsecondary education by supporting the efforts of current grantees to disseminate project ideas and results. Applications under the Final Year Dissemination Competitions are limited to grantees of FIPSE whose projects are in their final year of funding, except that a recipient of a single-year grant may apply for assistance under this competition within one year following the termination of his or her project.

*Deadline for Transmittal of Applications:* January 22, 1988.

*Applications Available:* November 19, 1987.

*Available Funds:* $100,000.

*Estimated Size of Awards:* $8,000 maximum.

*Project Period:* Not to exceed 12 months.

*Applicable Regulations:* (a) The regulations governing the Fund for the Improvement of Postsecondary Education, 34 CFR Part 630; and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78 with the exceptions noted in 34 CFR 630.4(b).

*For Applications or Information Contact:* Diana Hayman, 400 Maryland Avenue, SW., (Room 3100, ROB-3), Washington, DC 20202. Telephone number (202) 245-8091 or 245-8100.

*Program Authority:* 20 U.S.C. 1135.

Date: November 6, 1987.

**C. Ronald Kimberling,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 87-26605 Filed 11-17-87; 8:45 am]

BILLING CODE 4000-01-M

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[CFDA No. 84.116G]

## Invitation of Applications for New Awards Under the Lectures Program of the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal Year 1988

*Purpose:* Provides grants to or enters into cooperative agreements with institutions of postsecondary education and other public and private institutions and agencies to improve postsecondary education and educational opportunities through the development and presentation of lectures on key issues in postsecondary education at conferences and educational institutions.

*Deadline for Transmittal of Applications:* January 26, 1988.

*Applications available:* December 8, 1987.

*Available Funds:* $30,000.

*Estimated Size of Awards:* $5,000.

*Estimated Number of Awards:* 6.

*Project Period:* 12 months.

*Program Priorities:* Under 34 CFR 75.105(c)(1), "Annual priorities," the Secretary invites applicants to submit proposals that address the issues listed below. However, proposals that address other significant issues in postsecondary education are also eligible for support. Proposals are solicited that address the following issues:

(1) What has been the social and economic impact of the dramatic increase since 1960 in the proportion of American young people attending college, and what has been the impact on the nature and quality of college education itself?

(2) How can postsecondary education best respond to changes in the country's racial and ethnic composition? What can we learn from earlier educational responses to previous demographic shifts.?

(3) What are the most important changes in colleges' curricular offerings and students' curricular choices during the past decade? Are there significant similarities in the way the particular disciplines have evolved during this period?

*Applicable Regulations:* (a) The priority for the FIPSE Lectures Program published as a final priority in the **Federal Register** October 21, 1987 at 52 FR 39268 and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78 with the exceptions noted in 34 CFR 630.4(b), and (c) the Fund for the Improvement of Postsecondary Education program regulations, 34 CFR Part 630.

*For Applications or Information Contact:* Brian Lekander, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 3100, ROB-3), Washington, DC 20202. Telephone (202) 245-8091.

*Program Authority:* 20 U.S.C. 1135a-3

Dated: November 12, 1987.

**C. Ronald Kimberling,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 87-20606 Filed 11-17-87; 8:45 am]

BILLING CODE 4000-01-M

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# DEPARTMENT OF ENERGY

## Determination To Establish; Advisory Committee on Nuclear Facility Safety

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), I hereby certify that establishment of the Advisory Committee on Nuclear Facility Safety (ACNFS) is necessary and in the public interest in connection with the performance of duties imposed on the Department of Energy (DOE) by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR Subpart 101-6.10.

The purpose of ACNFS is to provide the Secretary of Energy with technical information, advice, and recommendations concerning DOE's nuclear facility safety.

Further information regarding this Advisory Committee may be obtained from Gloria Decker (202-586-8990).

Issued in Washington, DC on November 12, 1987.

**Charles R. Tierney,**

*Advisory Committee Management Officer.*

[FR Doc. 87-26549 Filed 11-17-87; 8:45 am]

BILLING CODE 6450-01-M

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# Economic Regulatory Administration

[Docket No. OFU-060]

## Acceptance of Application for Rescission of a Prohibition Order Submitted by Alabama Electric Cooperative, Inc. for Certain Prohibition Order Issued Pursuant to the Energy Supply and Environmental Coordination Act of 1974

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of acceptance.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) [1] hereby gives notice that acting under the authority granted to it in section 2(f) of the Energy Supply and Environmental Coordination Act of 1964 (ESECA), as amended by (15 U.S.C. 792(f) and implemented by 10 CFR 303.130(b)), it has accepted and is considering a request by the Alabama Electric Cooperative, Inc. (Cooperative) to rescind the Prohibition Order issued

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration (FEA) to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

on June 30, 1975, to the following powerplant:

| Owner | Docket No. | Generating station | Unit No. | Location |
|---|---|---|---|---|
| Alabama Electric Cooperative. | OFU-060 | McWilliams | 3 | Gantt, Alabama |

ERA is taking this action in accordance with the provisions of 10 CFR Part 303, Subpart j ("Modification on Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations. Detailed information for the proceeding is provided in the **SUPPLEMENTARY INFORMATION** section below.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 10585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

**DATES:** Comments on DOE's intention to consider the requested rescission of the above listed Prohibition Order is invited. Written comments are due on or before January 4, 1988. A request for public hearing must also be made within this 45-day public comment period. In making its decision regarding the requested recission action, DOE will consider all relevant information submitted or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR 303.9(f). DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

**ADDRESSES:** Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs Case Control Unit, Room GA-093, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. OFU 060 should be printed on the outside of the envelope and the document contained therein.

**FOR FURTHER INFORMATION CONTACT:**

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 586-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room GA-113, Washington, DC 20585, Telephone (202) 586-6947

**SUPPLEMENTARY INFORMATION:** The Prohibition Order to McWilliams Generation Station Unit 3 was made effective by the issuance of a Notice of Effectiveness (NOE) on October 16, 1978, with the actual prohibition on burning natural gas to commence January 31, 1984. The Powerplant and Industrial Fuel Use Act of 1978 (FUA) amended section 2(f)2 of ESECA by removing the time limits on DOE's authority to issue prohibition Orders. By letter dated December 21, 1978, DOE issued an amended NOE, which eliminated the Prohibition Order's termination date of December 31, 1984. This extended the prohiition against burning natural gas as the primary energy source of McWilliams Unit 3 indefinitely.

On March 24, 1987, the Cooperative submitted an application for Rescission of Prohibition Orders to ERA regarding the above enumerated generating station unit. The Cooperative maintains that it would be advantageous to be able to use natural gas as a primary energy source in McWilliams generating station Unit 3. The Cooperative's total installed generation capacity as of December 31, 1986 was 573 megawatts, of which 556 megawatts used coal as the primary energey source. In 1986, coal was used to generate approximately 99 percent of the Cooperative's members' energy requirements. Having natural gas available as the primary energy source for Unit 3 would give the Cooperative greater operational flexibility. The unit could be operated more efficiently as a peaking unit burning natural gas than burning coal. Placed in service in 1959 McWilliams Unit 3 has the capability to burn both coal and natural gas, separately or together to generate power. Using natural gas as its primary energy source the units maximum generating capability is 24 megawatts.

The Cooperative believes that the use of natural gas in Unit 3 is both practical and feasible. The Cooperative maintains that its supplier, Southeast Alabama Gas District, generally has natural gas available for use by the Cooperative as a boiler fuel.

Issued in Washington, DC, on November 6, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87-26550 Filed 11-17-87; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[EL87-64, et al.]**

### Freddie A. Fix, et al.; Hydroelectric Applications Filed with the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. *Type of application:* Declaration of Intention.

b. *Project no:* EL87-64.

c. *Date filed:* September 1, 1987.

d. *Applicant:* Freddie A. Fix.

e. *Name of project:* Falling Springs Hydroelectric Project.

f. *Location:* On Falling Springs Creek, Alleghany County, VA.

g. *Filed pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant contact:* Freddie A. Fix, Rte. 2, Box 270, Hot Springs, VA 24445 (703) 962-4108.

i. *FERC contact:* Diane M. Scire, (202) 376-9758.

j. *Comment date:* December 23, 1987.

k. *Description of Project:* The project would consist of: (1) A proposed 16-foot-wide, 16-foot-long, and 4-foot-deep concrete catch basin; (2) a new 5,500-foot, 20-inch penstock; (3) a rebuilt power plant; (4) proposed access roads; and (5) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of project:* Power not used by the applicant will be sold to the Virginia Power Company.

m. *This notice also consists of the following standard paragraphs:* B, C, and D2.

2 a. *Type of application:* Amendment of License.

b. *Project no.:* 4113-005.

c. *Date filed:* October 31, 1986.

d. *Applicant:* Long Lake Energy Corporation, Oswego Corporation, and Prudential Interfunding Corporation.

e. *Name of project:* Phoenix Project.

f. *Location:* On the Oswego River in Oswego and Onondaga Counties, New York.

g. *Filed pursuant to:* Federal Power Act, 16, U.S.C. 791(a)–825(r).

h. *Contact person:* Mr. Donald Hamer, Long Lake Energy Corporation, 420 Lexington Ave, Suite 440, New York, New York 10170 (212) 986–0440.

i. *FERC contact:* Robert Bell on (202) 376–5706.

j. *Comment date:* December 21, 1987.

k. *Description of Project:* The project as licensed consist of: (1) The existing Oswego River Lock and Dam No. 1. The dam is of concrete construction 11 feet high and 521 feet long; (2) the existing reservoir with an approximate surface area of 1,109 acres at a normal surface elevation of 362 feet msl with a gross storage capacity of 136,362 acre-feet; (3) the existing control gates; (4) the existing power canal, 120 feet long; (5) a new powerhouse having two generating units with a capacity of 3,882 kW; (6) a new switchyard; (7) a new 34.5–kV transmission line 900 feet long, that would tie into the Niagara Mohawk Power Corporation system; and (8) appurtenant facilities. The licensee proposes to amend its license by: (1) building an 85-foot-long power canal; (2) a powerhouse with one generating unit having an installed capacity of 2,700-kW; (3) a 2,150-foot-long 34.5-kV transmission line; and (4) appurtenant facilities. The project as licensed was to build on the North Bank of the Oswego River and the proposed amended facilities are being built on the South Bank. The licensee estimates the average annual generation would be reduced to 15,080 MWh from 24,500 MWh.

l. *This notice also consists of the following standard paragraphs:* B, C, and D1.

3 a. *Type of application:* Minor License.

b. *Project no.:* 8158–002.

c. *Date filed:* March 27, 1987.

d. *Applicant:* Littlefield Hydro Company.

e. *Name of Project:* Littlefield Hydroelectric Development.

f. *Location:* On the Little Androscoggin River in Androscoggin County, Maine.

g. *Filed pursuant to:* Federal; Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Little Hydro Company, c/o Consolidated Hydro, Inc., Two Greenwich Plaza, Greenwich, CT 06830, Attn: Jason D. James (203) 661–4203.

i. *FERC contact:* Tom Murphy (202) 376–9829.

j. *Comment date:* January 11, 1988.

k. *Description of Project:* The proposed project would consist of: 1) The rehabilitation of the breached 24-foot-high, including 3.0 feet of flashboards, 403-foot-long stone masonry and concrete dam with earth dikes; 2) a proposed reservoir with a surface area of 101 acres and a gross storage capacity of 750 acre-feet; 3) a proposed 60-foot-long by 35-foot-wide powerhouse housing a turbine generator unit with a capacity of 1,350 kW; and 4) a proposed 900-foot-long transmission line connecting to an existing Central Maine Power system. The applicant estimates with the total rated capacity of 1,350 kW an average annual energy generation of 5,062,000 kWh. The dam is owned by the applicant.

l. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D1.

4 a. *Type of application:* Preliminary Permit.

b. *Project no.:* 9690–000.

c. *Date filed:* December 18, 1985.

d. *Applicant:* Orange and Rockland Utilities, Inc.

e. *Name of project:* Rio Project.

f. *Location:* On the Mongaup River in Sullivan and Orange Counties, New York.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contacts:* Mr. Frank E. Fischer, Engineering and Production, Orange and Rockland Utilities, Inc., One Blue Hill Plaza, Pearl River, NY 10965 (914) 352–6000. Mr. G. S. P. Bergen, Mr. Thomas E. Mark, LeBoeuf, Lamb, Lieby, & MacRae, 520 Madison Avenue, New York, NY 10022 (212) 715–8372.

8i. *FERC contact:* Steven H. Rossi (202) 376–9819.

j. *Coment date:* December 23, 1987.

k. *Competing application:* Project No. 9754–000. *Date filed:* December 30, 1985.

l. *Description of project:* The existing project consists of: (1) A concrete gravity dam 100 feet high and 465 feet long, including 264 feet of overflow spillway section with 5-foot-high flashboards; (2) two earth embankment sections, 460 feet long at the eastern abutment and 540 feet long at the western abutment; (3) a concrete intake structure with trashracks and a steel intake gate 13.5 feet high and 11.25 feet wide; (4) a concrete and brick powerhouse 80 feet long and 30 feet wide equipped with two vertical-shaft Francis turbine-generator sets of 5,000 kW each; (5) a surge tank of wood stave and steel 35 feet in diameter, located upstream of the main powerhouse; (6) a tailrace 225 feet long and 45 feet wide with a concrete weir at the outlet; (7) 6,200 feet of 4-kV tansmission line; and (8) appurtenant facilities. The average annual generation is 32,900,000 kWh. The existing project and dam are owned by Orange and Rockland Utilities, Inc., Pearl River, New York.

m. *Purpose of project:* Project power is sold to the customers of Orange and Rockland Utilities, Inc.

n. *This notice also consists of the following standard paragraphs:* A8, A10, B, C, and D2.

5 a. *Type of applicaton:* Preliminary Permit.

b. *Project no:* 10169–000.

c. *Date filed:* November 17, 1986.

d. *Applicant:* Mahoning Creek Hydro Partners.

e. *Name of project:* Mahoning Creek.

f. *Location:* On Mahoning Creek near Kittanning, Armstrong, County, Pennsylvania.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact person:* Mr. Douglas A. Spaulding, Warzyn Engineering Inc., 715 Florida Ave., South-Suite 306, Minneapolis, MN 55426 (612) 593–5650.

i. *FERC contact:* Michael Dees (202) 376–9830.

j. *Comment date:* January 13, 1988.

k. *Description of project:* The proposed project would utilize the existing Corps of Engineers' Mahoning Creek Dam and reservoir and would consist of: (1) A proposed penstock 10 feet in diameter and 120 feet long; (2) a proposed concrete powerhouse 40 feet by 40 feet containing a 4,500-kW hydropower unit; (3) a proposed tailrace; (4) a proposed 34.5-kV transmission line one mile long; and (5) appurtenant facilities. The applicant estimates that the average annual energy out put would be 14.6 GWh, that the cost of the studies to be performed under the permit would be $200,000, and proposes to sell the energy to West Penn Power.

l. *This notice also consists of the following standard paragraphs;* A5, A7, A9, A10, B, C, D2.

6 a. *Type of application:* Preliminary Permit.

b. *Project no.:* 10467–000.

c. *Date filed:* June 2, 1987.

d. *Applicant:* Gentry Resources Corporation.

e. *Name of project:* Lake Pleasant Pumped Storage.

f. *Location:* On the Aqua Fria River in Maricopa County Arizona: T6N, R1W; T6N, R1E; T7N, R1E: G&SRB&M.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Darold E. Proctor, President, Gentry Resources Corporation, 11920 E. Maple, Aurora, CO 80012 (303) 350–5262.

i. *FERC contact:* Jesse W. Short (202) 376–9818.

j. *Comment date:* January 4, 1988.

k. *Description of project:* The proposed Lake Pleasant Pumped Storage Project would utilize the Bureau of Reclamation's New Waddell Dam and Lake Pleasant Reservoir and would consist of: (1) A new upper reservoir formed by 2 new dams, 300 and 280 feet high each, and a dike; (2) 2 power tunnels 25.5 feet diameter and about 3,000 feet long; (3) a new powerhouse with a total installed capacity of 800 MW beside Lake Pleasant Reservoir; (4) a 230-kv and about 10-mile-long transmission line; and (5) appurtenant facilities. The applicant estimates an average annual generation of 9,600 MWh. Applicant estimates the cost of the studies under the permit would be $950,000.

l. Project energy would be sold to the Arizona Public Service Company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

7 a. *Type of application:* Preliminary Permit.

b. *Project no:* 10465–000.

c. *Date filed:* September 1, 1987.

d. *Applicant:* Snake River Hydroelectric Corporation.

e. *Name of project:* Dike Hydroelectric Project.

f. *Location:* Occupies in part, lands administered by the Bureau of Land Management on the Snake River, near the town of Glenns Ferry, in Elmore County, Idaho.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Mr. Bart M. O'Keeffe, P.O. Box 60565, Sacramento, CA 95860 (916) 971–3717.

i. *FERC contact:* Thomas Dean, (202) 376–9275.

j. *Comment date:* December 23, 1987.

k. *Competing application:* Project No. 10469–000, Date Filed: September 4, 1987.

l. *Description of project:* The proposed project would consist of: (1) A 500–foot–long, 123–foot–high roller compacted concrete dam; (2) a 560–acre reservoir with a storage capacity of 19,000 acre-feet and a water surface elevation of 2,585 feet msl; (3) a powerhouse adjacent to the dam containing two generating units with a total installed capacity of 66 MW operating at 67 feet of hydraulic head; and (4) a 3,200–foot–long, 138–kV transmission line.

The applicant estimates the average annual energy production to be 400 GWh. The approximate cost of the studies under the permit would be $800,000.

m. *Purpose of project:* The applicant intends to sell the power generated at the proposed facilities.

n. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

8 a. *Type of application:* Preliminary Permit.

b. *Project no:* 10475–000.

c. *Date filed:* September 17, 1987.

d. *Applicant:* L. Maurice Baker.

e. *Name of project:* Whiskey Creek Project.

f. *Location:* In Mount Hood National Forest, on the North Fork Clackamas River, in Clackamas County, Oregon. Townships 4S and Range 5E.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* L. Maurice Baker, 804 Spaulding Bldg., 319 SW Washington, Portland, OR 97204.

i. *FERC contact:* Thomas Dean (202) 376–9275.

j. *Comment date:* January 13, 1988.

k. Description of Project: The Proposed project would consist of: (1) A 10–foot–high diversion structure at elevation 1,920 feel msl; (2) a 23,000–foot–long, 66–inch–diameter low pressure conduit leading to; (3) a 20 acre-foot forebay at elevation 1,900 feet msl; (4) a 4,000–foot–long, 48–inch–diameter penstock leading to; (5) a powerhouse containing a single generating unit with a capacity of 8,300 kW; and (6) a 115–kV transmission line.

The applicant estimates the average annual energy production to be 45,000 MWh. The approximate cost of the studies under the permit would be $100,000.

l. *Purpose of project:* Applicant intends to sell the power generated at the proposed facility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

9a. *Type of application:* Preliminary Permit.

b. *Project no.:* 10481–000.

c. *Date filed:* December 18, 1985.

d. *Applicant:* Orange and Rockland Utilities, Inc.

e. *Name of project:* Mongaup Project.

f. *Location:* On the Mongaup River in Sullivan and Orange Counties, New York.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contacts:* Mr. Frank E. Fischer, Engineering and Production, Orange and Rockland Utilities, Inc., One Blue Hill Plaza, Pearl River, NY 10965, (914) 352–6000. Mr. G. S. P. Bergen, Mr. Thomas E. Mark, LeBoeuf, Lamb, Leiby, & MacRae, 520 Madison Avenue, New York, NY 10022, (212) 715–8372.

i. *FERC contact:* Steven H. Rossi, (202) 376–9819.

j. *Comment date:* January 13, 1988.

k. *Description of project:* The existing project consists of the Mongaup Dam and Black Brook Dam. The existing project and dams are owned by Orange and Rockland Utilities, Inc., Pearl River, New York.

(i) Mongaup Facilities

A 40-foot-high, 156-foot-long concrete gravity spillway dam located at the crest of Mongaup Falls with 5-foot-high flashboards on its crest. The reservoir has a surface area of about 120 acres, a storage capacity of 76.3 million cubic feet, and a water surface elevation of 935 feet USGS. The reservoir is connected to the Mongaup Powerhouse by an 8-foot-diameter, 2,650-foot-long wood stave penstock. The Mongaup powerhouse has an installed capacity of 4,000 kW. A riveted steel plate surge tank is at the end of the penstock. The average annual generation is 15,900,000 kWh. The transmission line is 2,900 feet long.

(ii) Black Brook Facilities

The Black Brook Dam is a 44-foot-long concrete gravity spillway. Crest control is accomplished with an 8-foot stop log section and a 34-foot flashboard section, each 5 feet high. Total overall height of the dam, flashboard and stop log sections, is 15 feet with the top of the boards located at 948 feet USGS and the top of the dam crest at 943 feet USGS. The reservoir has no storage. Water from the Black Brook Dam is discharged into the Mongaup surge tank by means of a 4-foot diameter, 4,300-foot-long penstock.

l. *Purpose of project:* Project power is sold to the customers of Orange and Rockland Utilities, Inc.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

10 a. *Type of application:* Preliminary Permit.

b. *Project no.:* 10482–000.

c. *Date filed:* December 18, 1985.

d. *Applicant:* Orange and Rockland Utilities, Inc.

e. *Name of project:* Swinging Bridge Project.

f. *Location:* On the Mongaup River in Sullivan and Orange Counties, New York.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contacts:* Mr. Frank E. Fischer, Engineering and Production, Orange and Rockland Utilities, Inc., One Blue Hill Plaza, Pearl River, NY 10965 (914) 352–6000. Mr. G.S.P. Bergen, Mr. Thomas E. Mark, LeBoeuf, Lamb, Leiby, & MacRae, 520 Madison Avenue, New York, NY 10022 (212) 715–8372.

i. *FERC contact:* Steven H. Rossi, (202) 376–9819.

j. *Comment date:* January 13, 1988.

k. *Description of project:* The existing project consists of the Toronto, Cliff Lake, and Swinging Bridge Dams. The existing project and dams are owned by Orange and Rockland Utilities, Inc., Pearl River, New York.

(i) Toronto Facilities

The earth-fill Toronto Dam is 1,620 feet long and 103 feet high and has a 50-foot-wide concrete and rock side channel spillway at its west end. Five-foot-high pin-type flashboards are used in the spillway channel. The reservoir has a surface area of 860 acres, a storage capacity of 24,658 acre-feet, and a water surface elevation of 1,220 feet USGS. Discharges from the Toronto Reservoir to Cliff Lake are made through an 8-foot reinforced concrete horse-shoe shaped conduit, 460 feet in length.

(ii) Cliff Lake Facilities

Cliff Lake Dam consists of a concrete spillway section 98 feet long with concrete abutments and earth-fill embankments totaling 610 feet in length. Thirteen-inch-high pin-type flashboards are on the spillway crest. The reservoir has a surface area of 190 acres, a storage capacity of 2,899 acre-feet, and a water surface elevation of 1,072 feet USGS. Water releases from Cliff Lake to Swinging Bridge Reservoir are made through a 2,100-foot-long, 5.3-foot-wide, and 6.6-foot-high unlined horseshoe-shaped tunnel.

(iii) Swinging Bridge Facilities

The earth-fill Swinging Bridge Dam is 975 feet long and 135 feet high, and has a separate concrete side channel spillway located 750 feet upstream of the dam. Five-foot-high pin-type flashboards are on the northern half of the spillway crest. On the remaining half of the spillway, there are 5 motor-driven gates. The reservoir has a surface area of 1,000 acres, a storage capacity of 17,222 acre-feet, and a water surface elevation of 1,070 feet USGS.

The Swinging Bridge Powerhouse No. 1 has an installed capacity of 5,000 kW and is supplied from the Swinging Bridge Reservoir by a steel-lined circular concrete penstock, 692 feet long and 10 feet in diameter. A butterfly-type motor-operated valve, 8 feet in diameter, is located in a gate tower, which is constructed on top of the penstock and is 246 feet downstream of the penstock intake. A 25-foot-wide tailrace leads 75 feet from the draft tube discharge to the river.

The Swinging Bridge Powerhouse No. 2 has an installed capacity of 6,750 kW and is supplied from the Swinging Bridge Reservoir through a concrete lined tunnel 784 feet long around the west end of the dam, connected to a steel penstock 188 feet long. Both the lined tunnel and the steel penstock have diameters of 9.75 feet. Located 571 feet downstream of the intake is a surge tank and a 20-foot-long tailrace.

The two powerhouses are constructed of brick, steel, and reinforced concrete. Their total average annual generation is 18,700,000 kWh. The transmission line is 25 feet long for Powerhouse No. 1 and 150 feet long for Powerhouse No. 2.

l. *Purpose of project:* Project power is sold to the customers of Orange and Rockland Utilities, Inc.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

11 a. *Type of application:* Amendment of License.

b. *Project No.:* 2426–024.

c. *Date filed:* April 3, 1987.

d. *Applicant:* California Department of Water Resources.

e. *Name of project:* Devil Canyon Powerplant Project.

f. *Location:* On San Bernardino Tunnel, in San Bernardino County, California.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–826(r).

h. *Applicant contact:* Viju Patel, Chief, Energy Division, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236–0001 (916) 445–8687.

i. *FERC contact:* Ahmad Mushtaq, (202) 376–1900.

j. *Comment date:* December 21, 1987.

k. *Description of Project:* Applicant proposes to make the following modifications to its licensed Project No. 2426: (1) Add a 12-foot-diameter, 1.3-mile-long steel penstock; (2) add two generating units (units 3 and 4) with a total installed capacity of 160 MW to the existing Devil Canyon Powerplant operating under a head of 1,406 feet; (3) modify the tailrace channels for the new units, and (4) appurtenant facilities.

The cost of the proposed modifications has been estimated at $136 million. No recreational facilities are proposed by the applicant.

l. *This notice also consists of the following standard paragraphs:* B and C.

12 a. *Type of application:* Amendment of License.

b. *Project No.:* 3309–005.

c. *Date filed:* June 18, 1987.

d. *Applicant:* Arthur E. Cohen.

e. *Name of project:* Nash Mill Project.

f. *Location:* On the Ashuelot River in Cheshire County, New Hampshire.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact person:* Arthur E. Cohen, 44 Hanover Street, Keene, NH 03431, (603) 352–2127.

i. *FERC contact:* Robert Bell, (202) 376–5706.

j. *Comment date:* December 21, 1987.

k. *Description of Project:* The project as licensed consists of: (1) A breached stone and masonry dam to be rehabilitated, consisting of a 100-foot-long dam section nine feet high and two spillway sections, a 40-foot-long ungated spillway seven feet high and a 21-foot-long gated spillway seven feet high; (2) 24-inch-high flashboards; (3) a reservoir with an area of two acres and a storage capacity of 10 acre-feet; (4) a penstock 1,500 feet long and 4 feet diameter placed on the southern bank; (5) a powerhouse contained two generator units with a total installed capacity of 200-kW operating under a head of 43 feet; (6) a tailrace 600 feet long; (7) a 1,000-foot-long, 12.5-kV transmission line; and (8) appurtenant facilities.

The applicant proposes to amend the license by removing the 24-inch-high flashboards and replacing them with 36-inch-high flashboards.

l. *Purpose of project:* All project power would be sold to a local utility.

m. *This notice also consists of the following standard paragraphs:* B, and D1.

13 a. *Type of Application:* Surrender of License.

b. *Project No.:* 5755–005.

c. *Date Filed:* August 17, 1987.

d. *Applicant:* Foresthill Pubilic Utility District.

e. *Name of Project:* Sugar Pine Dam Power Project.

f. *Location:* On North Shirttail Creek, in Placer County, California.

g. *Filed Pursuant to:* Federal Power Act. 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Kurt W. Reed, Manager, Foresthill Public Utility District, P.O. Box 266, Foresthill, CA 95631.

i. *FERC Contact:* Ahmad Mushtaq, (202) 376–1900.

j. *Comment Date:* December 21, 1987.

k. Description of the Proposed Surrender: The project would have utilized the existing U.S. Bureau of Reclamation's (USBR) Sugar Pine Dam Outlet works on North Shirttail Creek and would have consisted of : (1) A 14-inch-diameter, 300-foot-long penstock;

(2) a powerhouse with a total installed capacity of 70 kW; (3) a tailrace return into the existing outlet works chute at junction with spillway; (4) the 400–V generator leads; (5) a 480/12,000–V, 100–kVA transformer; (6) a 200–foot-long, 12–kV underground transmission line; and (7) appurtenant facilities.

The licensee states that the project is not feasible based on current energy prices and, therfore, unable to secure financing for the project.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

**Standard Pargraphs**

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the intial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. *Preliminary Permit*—Public notice of the filing of the initial prelimiary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice to intent of file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such as application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminaary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Document*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. William C. Wakefield II, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish an wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825*l* (b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, the agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments that may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency dos not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibiliies. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 13, 1987.

**Lois D. Cashell,**

*Acting Secretary.*

[FR. Doc. 87-26579 Filed 11-17-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP88-19-000 et al.]**

## Columbia Gas Transmission Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

### 1. Columbia Gas Transmission Corporation

[Docket No. CP88-19-000]

November 9, 1987.

Take notice that on October 13, 1987, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88-19-000 a request pursuant to § 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate sales taps and related facilities for eleven additional points of delivery to existing wholesale customers, under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia proposes the following points of delivery for the following wholesale customers:

(1) Columbia Gas of Ohio, Inc.

1 tap for commerical service
3 taps for residential service
2 taps for industrial service
Estimated annual usage of 169,062 Mcf

(2) Columbia Gas of Pennsylvania, Inc.

1 tap for industrial service
Estimated annual usage of 40,000 Mcf

(3) Columbia Gas of Virginia, Inc.

1 tap for commercial service
1 tap for industrial service
Estimated annual usage of 77,240 Mcf

(4) National Fuel Gas Supply Corporation

1 tap for residential service
Estimated annual usage of 149,000 Mcf

(5) Waterville Gas and Oil Company

1 tap for residential service
Estimated annual usage of 150 Mcf

Columbia states that the additional points of delivery are required to serve new requests made by Columbia's wholesale customers for residential, commercial and/or industrial service. Columbia further states that the additional volumes to be provided through the new delivery points are within Columbia's currently authorized level of service. Columbia indicates that such volumes would not affect the peak day and annual deliveries to which these existing wholesale customers are entitled. Furthermore, Columbia states that the sales to be made through the proposed points of delivery will be under Columbia's currently effective Contract Demand Service Rate Schedule.

*Comment date:* December 28, 1987, in accordance with Standard Paragraph G at the end of this notice.

### 2. High Island Offshore System U-T Offshore System

[Docket No. CP75-104-051; Docket No. CP76-118-014]

November 9, 1987.

Take notice that on October 22, 1987, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243 and U-T Offshore System (U-TOS), 2800 Post Oak Boulevard, P.O. Box 1396, Houston, Texas 77251 jointly filed petitions to amend in Docket Nos. CP75-104-051 and CP76-118-014 respectively, pursuant to sections 7(b) and 7(c) of the Natural Gas Act, to amend the certificates of public convenience and necessity issued in Docket Nos. CP75-104 and CP76-118 so as to authorize a new service and to partially abandon service, all as more

fully set forth in the application which is on file with the Commission and open to public inspection.

Petitioners state that Northern Natural Gas Company, Division of Enron Corp. (Northern) and HIOS are parties to a contract dated February 15, 1978, as amended, contained in Original Volume No. 2 of HIOS' FERC Gas Tariff as Rate Schedule T-9. Pursuant to this contract, the certificate granted to HIOS in Docket No. CP75-104, as subsequently amended, and Rate Schedule I contained in HIOS' FERC Gas Tariff, Original Volume No. 1, Northern is entitled to have its system-supply gas transported in the HIOS system on a firm and on an interruptible overrun basis. Because of declining demand for system-supply sales in its market area, Northern has experienced reductions in its use of its capacity in HIOS.

Northern and U-TOS are parties to a contract dated May 1, 1978, as amended, contained in Original Volume No. 2 of the U-TOS' FERC Gas Tariff as Rate Schedule T-9. Pursuant to this contract, the certificate granted to U-TOS in Docket No. CP76-118, as subsequently amended, and Rate Schedule I contained in U-TOS' FERC Gas Tariff, Original Volume No. 1, Northern is entitled to have its system-supply gas transported in the U-TOS system on a firm and on an interruptible overrun basis. Northern has experienced reductions in its use of its capacity in U-TOS similar to those experienced on HIOS.

By separate agreements dated May 18, 1987 (Assignment Agreements), Northern has conditionally assigned portions of its contracted capacity in HIOS and U-TOS to Petrofina Gas Pipeline Company (Petrofina), a Texas Hinshaw pipeline, subject only to the Commission's approval of this Petition. Subject only to this condition, Petrofina has assumed all financial and other obligations of Northern with respect to the assigned portions of Northern's HIOS and U-TOS capacity.

Specifically, the Assignment Agreements provide for the assignment to Petrofina of all of Northern's right and entitlement to a currently effective contract demand of 12,000 Mcf under HIOS' and U-TOS' Rate Schedule T-9, and such of Northern's right and entitlement to interruptible overrun transportation service as relates to a specification of 20,000 Mcf per day in the table set forth in Section 3 of HIOS' and U-TOS' Rate Schedules I.

Petrofina has access to reserves proximate to the facilities of HIOS from which gas was previously sold to Northern. Petrofina needs reliable transportation of that gas to points onshore.

More particularly, Petrofina has entered into a long-term gas purchase contract with Fina Oil and Chemical Company (Fina), its affiliate, covering gas previously sold under contract to Northern from Block A-571, B platform, High Island Area, South Addition. This gas will be delivered to HIOS for Petrofina's account at an existing subsea tap located on Block A-546. HIOS will redeliver the gas for Petrofina's account at HIOS' existing delivery point at West Cameron Block 167 for further transportation onshore by U-TOS. No new facilities will be needed in order for HIOS or U-TOS to perform the requested service.

*Comment date:* November 30, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**Tennessee Gas Pipeline Company, a Division of Tenneco Inc.**

[Docket No. CP88-51-000]

November 9, 1987.

Take notice that on October 29, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP88-51-000 a request, pursuant to § 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Reading & Bates Petroleum Co. (R&B), a producer, under Applicant's blanket certificate issued in Docket No. CP87-118-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated July 30, 1987, it proposes to transport natural gas for R&B from a point located in the South Hallisville Field, Harrison County, Texas to a delivery point, also in the South Hallisville Field, which is located at an existing interconnection with United Gas Pipe Line Company.

The applicant further states that the peak day quantities would be 1,238 dekatherms, the average daily quantities would be 1,238 dekatherms, and that the annual quantities would be 451,870 dekatherms. It is stated that service under § 284.223(a) commenced August 7, 1987, as reported in Docket No. ST87-4390.

*Comment date:* December 28, 1987, in accordance with Standard Paragraph G at the end of this notice.

**4. Alabama-Tennessee Natural Gas Company**

[Docket No. CP88-56-000]

November 10, 1987.

Take notice that on October 30, 1987, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P.O. Box 918, Florence, Alabama 35631, filed in Docket No. CP88-56-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Alabama-Tennessee to transport natural gas on behalf of the City of Decatur, Alabama (Decatur) and a request for temporary authorization for such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Decatur would cause gas to be delivered to Alabama-Tennessee at various existing points of interconnection of facilities between Alabama-Tennessee and Tennessee Gas Pipeline Company (Tennessee Gas) in Alcorn County, Mississippi or Colbert County, Alabama and/or between Alabama-Tennessee and Columbia Gulf Transmission Company (Columbia Gulf) in Alcorn County, Mississippi and/or between Alabama-Tennessee and Tennessee River Intrastate Gas Company, Inc. (TRIGAS) in Colbert County, Alabama. Alabama-Tennessee proposes to transport on an interruptible basis up to 32,900 dth of gas per day for Decatur to an existing point of interconnection between Alabama-Tennessee and Decatur in Decatur, Alabama.

Alabama-Tennessee requests that the proposed transportation be authorized for a term expiring one year from the date of initial deliveries under a transportation contract between Alabama-Tennessee and Decatur dated October 16, 1987.

Alabama-Tennessee states that its agreement with Decatur provides that Decatur shall pay Alabama-Tennessee each month applicable transportation charge(s) as approved by the Federal Energy Regulatory Commission.

*Comment date:* December 1, 1987, in accordance with Standard Paragraph F at the end of this notice.

**5. Northwest Pipeline Corporation**

[Docket No. CP88-55-000]

November 10, 1987.

Take notice that on October 30, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP88-55-000, an application pursuant to

section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the interruptible transportation of natural gas on behalf of Boise Cascade Corporation (Boise Cascade), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 18,000 MMBtu's of natural gas per day, on an interruptible basis, for the account of Boise Cascade, for a term of two years commencing with initial delivery, pursuant to a transportation agreement (transportation agreement) dated August 6, 1987, which provides for transportation service under Rate Schedules T–4 and T–5 of Northwest's FERC Gas Tariff Volume 1–A.

It is stated that Boise Cascade is negotiating to purchase Canadian supplies of natural gas which it would cause to be delivered to Northwest at the existing interconnection with Westcoast Transmission Company Limited at the Canadian border near Sumas, Washington. Northwest proposes to allow Boise Cascade the flexibility to switch suppliers behind the Sumas transportation receipt point upon authorization of this receipt point.

Northwest proposes to transport Boise Cascade's volumes through its transmission system and redeliver thermally equivalent volumes, less any transmission fuel retained in-kind, to existing interconnections with Northwest Natural Gas Company (Northwest Natural) at the South Vancouver delivery point in Clark County, Washington and at the Deer Island delivery point in Columbia County, Oregon and with Cascade Natural Gas Company (Cascade) at the Burbank Heights delivery point in Franklin County, Washington. It is stated further that Northwest Natural would deliver gas to Boise Cascade's Vancouver, Washington paper mill and St. Helens, Oregon paper mill and Cascade would deliver gas to Boise Cascade's Wallula, Washington paper mill.

Northwest proposes to charge Boise Cascade for all volumes of gas transported and delivered under the transportation agreement at either the interruptible, incremental on system transportation rate or the interruptible, replacement on-system transportation rate as set forth, respectively, in Northwest's Rate Schedules T–4 and T–5, FERC Gas Tariff, Volumes No. 1–A. It is stated that the T–4 transportation rate would apply to volumes transported during any months which are incremental to the corresponding 1984 monthly volumes for the end-users as indicated on Exhibit C of the transportation agreement. It is indicated that the T–5 transportation rate would apply to all volumes transported which are not incremental to the corresponding 1984 monthly volumes. Furthermore, it is stated that the currently effective T–4 transportation rate is 32.73 cents per MMBtu plus a GRI charge of 1.50 cents per MMBtu, and annual Commission charge adjustment of 0.21 cents per MMBtu, and full reimbursement charge, and if applicable a take-or-pay cost reimbursement fee of 24.00 cents per MMBtu and/or a gathering payment credit of 30.91 cents per MMBtu.

*Comment date:* December 1, 1987, in accordance with Standard Paragraph F at the end of this notice.

**Southern Natural Gas Company**

[Docket No. CP88–54–000]

November 10, 1987

Take notice that on October 30, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP88–54–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for Shell Oil Company, Shell Offshore Inc., Shell Western E&P Inc., and Shell Gas Trading Company (collectively referred to as Shell), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport for Shell up to 57,500 MMBtu of natural gas per day on a firm basis for a term expiring on December 31, 1991. Southern also proposes to transport for Shell up to 112,750 MMBtu of natural gas per day on an interruptible basis for a term commencing 30 days after the date of any order issued herein and terminating 37 months from the date of acceptance by Southern of the certificate issued in said order. Additionally, Southern states that the interruptible transportation agreement provides that Shell may extend the term one day for every day that Southern would curtail or limit the quantity of gas nominated by Shell provided that Southern or its designee does not purchase the quantity and provided that Shell would attempt to make alternative business arrangements for the delivery or redelivery of the gas on the day that Southern would limit such quantity.

Southern states that the firm transportation agreement provides that Shell would deliver or cause gas to be delivered to Southern at various existing points on Southern's contiguous pipeline system. It is indicated that Southern would then redeliver the gas to Mississippi Chemical Corporation (Mississippi Chemical) at Southern's Mississippi Chemical Corporation meter station in Yazoo County, Mississippi. Southern states that it would retain 3.25 percent of the total quantity of gas delivered which would be deemed to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses) and any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas for Shell or Mississippi Chemical.

Southern states that the interruptible transportation agreement provides that Shell would deliver or cause to be delivered volumes at various existing points on Southern's contiguous pipeline system. Southern would then redeliver the gas to Shell at 18 various points of interconnection located on Southern's contiguous supply area pipeline system. Southern states that it would retain 1.00 percent of the total quantity of gas it receives from Shell for compressor fuel and company-use gas (including system unaccounted-for gas losses) and any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas.

It is indicated that Shell would pay Southern a firm transportation rate of 15.0 cents for each MMBtu of gas redelivered by Southern and an interruptible transportation rate of 10.0 cents per MMBtu of gas redelivered by Southern. Southern states that in addition to the above rates, Southern would collect from Shell the GRI surcharge of 1.52 cents per Mcf.

It is stated that the firm and interruptible transportation agreements provide that Shell and Southern may mutually agree to the addition and deletion of delivery points from time to time. It is further stated that the interruptible transportation agreement provides for the addition or substitution of redelivery points. Southern states that these additional points would be designated so long as they do not conflict with existing commitments or operations of Southern and provided that they are located on Southern's interconnected pipeline system tributary to Southern's Franklinton Compressor Station. Southern indicates that it would undertake to file periodic reports with the Commission should Shell request and Southern agree to the addition of delivery of redelivery points.

*Comment date:* December 1, 1987, in accordance with Standard Paragraph F at the end of this notice.

**7. Northern Natural Gas Company, Division of Enron Corp.**

[Docket No. CP88-60-000]

November 12, 1987.

Take notice that on November 2, 1987, Northern Natural Gas Company, Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-60-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate five measurement stations to accommodate natural gas deliveries to five non-right-of-way grantors served by the local distribution company, Peoples Natural Gas Company (Peoples), under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern requests authorization to install and operate five measurement stations as follows:

| End-user | Distributor | Location and end-use |
|---|---|---|
| Anderson, Edward | Peoples | Sec. 27, Twp. 114N, Rng. 21W, Scott Co., MN, residential. |
| Gregorie, James | Peoples | Sec. 34, Twp. 32, Rng. 21, Washington Co., MN, residential. |
| IBP, Inc | Peoples | Sec. 18, Twp. 88, Rng. 5, Delaware Co., IA, industrial. |
| Skokan, Jim | Peoples | Sec. 21, Twp. 80N, Rng. 19W, Jasper Co., IA, residential. |
| Trimpa, Jerrald D | Peoples | Sec. 29, Twp. 28, Rng. 33, Haskell Co., KS, irrigation. |

Northern states that deliveries to these measurement stations will be made within the existing firm entitlement of Peoples.

*Comment date:* December 28, 1987, in accordance with Standard Paragraph G at the end of this notice.

**8. Transcontinental Gas Pipe Line Corporation**

[Docket No. CP88-52-000]

November 12, 1987.

Take notice that on October 30, 1987, Transcontinental Gas Pipe Line Corporation (Transco), P. O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-52-000 an application pursuant to section 7(c) of the Natural Gas Act, for authorization to transport up to the dekatherm equivalent of 7,000 Mcf of natural gas per day on behalf of Amoco Production Company (Amoco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement between Transco and Amoco, dated August 20, 1987, Transco states that it is requesting authorization to transport, on an interruptible basis, quantities of natural gas produced by Amoco in certain blocks in the Offshore Gulf of Mexico area. Transco further states that it would receive such gas at two existing points of receipt located in the following offshore blocks: (1) Ship Shoal 70, Offshore Louisiana, and (2) Ship shoal 72, Offshore Louisiana. Transco advises that it would deliver such quantities (less compressor fuel and line loss make-up) to Amoco at the Florida Gas Transmission Company interconnect on Transco's system in St. Helena Parish, Louisiana.

Transco states that it would charge Amoco a transportation rate of 11.2 cents per dt based on Sheet No. 19 of Transco's FERC Gas Tariff, Second Revised Volume No. 1, as such rates may be amended or superseded from time to time. Transco advises that the transportation rate was accepted by the Commission's order dated September 29, 1987, in Docket No. RP87-109-000, *et al* and includes an ACA unit charge of 0.2 cents per dt.

Transco avers that the transportation agreement would remain in force for a primary term of five (5) years from the date of initial deliveries, and year to year thereafter unless and until terminated by either party giving proper notice.

Finally, Transco states that by filing this application, it is not electing "non-discriminatory access" as such term is described and defined in §§ 284.8(b) and 284.9(b) of the Commission's Regulations (promulgated in Order Nos. 436 and 500).

*Comment date:* December 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-26578 Filed 11-17-87; 8:45 am]

BILLING CODE 6717-01-M

## Southwestern Power Administration

## Proposed Power Rates; Opportunities for Public Review and Comment

**AGENCY:** Southwestern Power Administration (SWPA), DOE.

**ACTION:** Notice of proposed system and Sam Rayburn Dam Power Rates and opportunities for public review and comment.

**SUMMARY:** The Administrator, SWPA, has prepared Current and Revised 1987 Power Repayment Studies for the Integrated System projects and for the Isolated Sam Rayburn Dam project which show the need for increases in annual revenues to meet cost recovery criteria. These increased revenues are needed primarily to cover increased annual expenses for operation and maintenance of both the Integrated System generating facilities and the Sam Rayburn Dam project, as well as the transmission system for the Integrated System. The Administrator has also developed proposed Integrated System Rate Schedules, supported by a rate design study, and a proposed rate schedule for the isolated Sam Rayburn Dam project to recover the required revenues. The proposed rate for the Sam Rayburn Dam would increase annual revenue approximately 5.8 percent from $1,715,040 to $1,815,060, beginning March 1, 1988. The proposed rates for the Integrated System projects would increase annual revenues approximately 4.3 percent from $87,237,600 to $91,005,700, also beginning March 1, 1988.

**DATES:** A public information forum will be held December 15, 1987, in Tulsa, Oklahoma. A public comment forum will be held January 12, 1988, in Tulsa, Oklahoma. Written comments are due on or before February 16, 1988.

**ADDRESS:** Ten copies of the written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581-7529.

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Pub. L. 95-91, dated August 4, 1977, and SWPA's power marketing activities were transferred from the Department of Interior to the Department of Energy, effective October 1, 1977.

SWPA markets power from 23 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma, and Texas. SWPA's marketing area includes these States plus Kansas and Louisiana. The 22 projects to which the proposed Integrated System rate schedules apply are interconnected through SWPA's transmission system and exchange agreements with other utilities. The Sam Rayburn Dam project, located on the Angelina River in the Neches River Basin in eastern Texas, consists of two hydroelectric generating units with an installed capacity of 52,000 kW. The project is not interconnected with SWPA's Integrated System hydraulically, electrically or financially. Instead, the power produced by the Sam Rayburn Dam project is marketed by SWPA as an isolated project under a contract through which the customer purchases the entire power output of the project at the dam. A separate power repayment study is prepared for the project which has a special rate based on the hydraulically, electrically, and financially isolated operation.

Following Department of Energy guidelines the Administrator, SWPA, prepared current power repayment studies for the Integrated System using the existing system rates and for the Sam Rayburn Dam project using the existing annual rate of $1,715,040. Both studies indicate that the legal requirement to repay the power investment with interest will not be met without additional revenue, primarily as a result of increased annual operation and maintenance expenses experienced by the Corps of Engineers at the projects. The Revised Power Repayment Study for the isolated Sam Rayburn project shows that an additional $100,020 (a 5.8 percent increase) annually is needed to satisfy repayment criteria. This increase would change annual revenues produced by the Sam Rayburn Dam project from $1,715,040 to $1,815,060 and satisfy the present financial criteria for repayment of the project within the required number of years. The revised power repayment study for the Integrated System shows that additional annual revenue of $3,768,100 (a 4.3 percent increase) is needed to satisfy repayment criteria. A rate design study has also been completed which allocates the revenue requirement to the various system rate schedules for recovery. The proposed increase would change annual revenues produced by the Integrated System projects from $87,237,600 to $91,005,700 and satisfy the present financial criteria for repayment of the projects within the required number of years. As indicated in the rate design study for the Integrated System, this revenue would be developed through increases in the basic monthly demand charges, a combination of a decrease and an increase in the condition of service charges for 69 kV and load center or below 69 kV deliveries respectively, and an increase in energy charges for purchases of federal hydroelectric power and energy. In addition the rate design study indicates the need for increases in charges for the use of SWPA's transmission system to deliver non-federal power and energy. A second element of the Integrated System rates for power and energy, the purchased power adders which produce revenues segregated to cover system purchase power costs, will be reduced as a result of good water conditions. The effect of this reduction when combined with the increased demand and energy charges, will be a net decrease in the average peaking and firm power rates for customers affected by the purchased power adders and an increase for others. Below is a comparison of the existing and proposed system rates:

| | Existing | Proposed |
|---|---|---|
| CAPACITY: | RATE SCHEDULE P-84A: | RATE SCHEDULE P-86A: |
| 138-161 kV | $2.25kW/Mo | $2.27/kW/Mo |
| 69 kV | +.25/kW/Mo, or | +.16/kW/Mo, or |
| Load Center or Below 69 kV | +.75/kW/Mo | +.76/kW/Mo |
| ENERGY | $0.0035/kWh of Peaking Energy and Supplemental Peaking Energy plus a Purchased Power Adjustment of $0.002/kWh of Peaking Energy with a Credit of $.0005/kWh of Peaking Energy. | $0.004 kWh of Peaking Energy and Supplemental Peaking Energy plus a Purchased Power Adjustment of $0.0015/kWh of Peaking Energy with a Credit of $.0015/kWh of Peaking Energy. |
| | RATE SCHEDULE P-84B: | RATE SCHEDULE P-86B: |
| CAPACITY Load Center | $3.00/kW/Mo | $3.03/kW/Mo |
| ENERGY | $0.0035/kWh of Peaking Energy and Supplemental Peaking Energy plus a Purchased Power Adjustment of $0.002/kWh of Peaking Energy with a Credit of $.0005/kWh of Peaking Energy. | $.004 kWh of Peaking Energy and Supplemental Peaking Energy plus a Purchased Power Adjustment of $0.0015/kWh of Peaking Energy with a Credit of $0.0015/kWh of Peaking Energy. |
| CAPACITY: | RATE SCHEDULE F-84A: | RATE SCHEDULE F-86A: |
| 138-161 kV | $2.25/kW/Mo | $2.27/kW/Mo |
| 69 kV | +.25/kW/Mo, or | +.16/kW/Mo, or |
| Load Center or Below 69 kV | +.75/kW/Mo | +.76/kW/Mo |

| | Existing | Proposed |
|---|---|---|
| ENERGY | $.0035/kWh of Firm Energy plus a Purchased Power Adjustment of $0.005/kWh of Firm Energy with a Credit of $0.0005/kWh of Firm Energy. | $0.004 kWh of Firm Energy plus a Purchased Power Adjustment of $0.00375/kWh of Firm Energy with a Credit of $0.0015/kWh of Firm Energy. |
| | RATE SCHEDULE F-84B: | RATE SCHEDULE F-86B: |
| CAPACITY Load Center | $3.00/kW/Mo | $3.03/kW/Mo |
| ENERGY | $.0035/kWh of Federally-Generated Energy plus a Purchased Power Adjustment of $0.002/kWh of "Federal Energy" with a Credit of $0.0005/kWh of "Federal Energy" (Defined as 1,200 KWh of Energy per kW of Capacity during each Contract Year) plus an amount in dollars equal to the actual cost to SWPA of thermalgenerated energy purchased by SWPA from the Oklahoma Utility Companies for service to the customer. | $.004/kWh of Federally-Generated Energy plus a Purchased Power Adjustment of $0.0015/kWh of "Federal Energy" with a Credit of $0.0015/kWh of "Federal Energy" (Defined as 1,200 kWh of Energy per kW of Capacity during each Contract Year) plus an amount in dollars equal to the actual cost to SWPA of thermalgenerated energy purchased by SWPA from the Oklahoma Utility Companies for service to the customer. |
| CAPACITY (Firm w/Energy): | RATE SCHEDULE TDC-82 (REVISED): | RATE SCHEDULE TDC-86: |
| 138-161kV | $0.30/kW/Mo | $0.53/kW/Mo |
| 69 kV | +.20/kW/Mo, or | +.16/kW/Mo, or |
| Load Center or Below 69 kV | +.40/kW/Mo | +.76/kW/Mo |
| ENERGY (Firm w/o Capacity) | $.001/kWh | $0.0012/kWh |
| INTERRUPTIBLE (Non-firm w/Energy): | | |
| 138-161kV | .015/kW/Day | $0.0265/kW/Day |
| 69kV | +.010/kW/Day, or | +.0080/kW/Day, or |
| Load Center or Below 69kV | +020./kW/Day | +.0380/kW/Day |
| | RATE SCHEDULE IC-82: | RATE SCHEDULE IC-86: |
| CAPACITY: | $.075/kW/Day of Interruptible Capacity | $0.075/kW/Day of Interruptible Capacity |
| ENERGY | $.0035/kWh, or return | $0.004/kWh, or return |
| | RATE SCHEDULE EE-82: | RATE SCHEDULE EE-86: |
| ENERGY | $.00035/kWh | $0.004/kWh |

Opportunity is presented for customers and other interested parties to receive copies of the studies and proposed rate schedules for the Integrated System projects and/or the Sam Rayburn Dam project. If you desire a copy of either the Repayment Study and Rate Design Study Data Package for the Integrated System or the Repayment Study Data Package for the Sam Rayburn Dam project, please do not hesitate to submit your request to: Mr. Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, OK 74101, (918) 581-7529.

A public information forum will be held December 15, 1987, in the Aaronson Auditorium, City County Library, 400 Civic Center, Tulsa, Oklahoma, at 9:30 a.m., to explain to the public the proposed rates and supporting studies. Questions may be submitted from interested persons. The forum will be conducted by a chairman who will be responsible for orderly forum procedures. Questions raised at the Forum concerning the rates and studies will be answered, to the extent possible, at the Forum. Questons not answered at the Forum will be answered in writing, except that questions involving voluminous data contained in SWPA's records may best be answered by consultation and review of pertinent records at SWPA's offices.

A public comment forum will be held January 12, 1988, at the same time and location established for the public information forum. At the public comment forum, interested persons may submit written comments or make oral presentations of their views and comments. The forum will be conducted by a chairman who will be responsible for orderly procedure. SWPA's representatives will be present, and they and the Chairman may ask questions of the speakers. Persons interested in speaking should submit a request to the Administrator, SWPA, at least three (3) days before the Forum so that a list of speakers can be developed. The Chairman may allow others to speak if time permits.

A transcript of each forum will be made. Copies of the transcripts may be obtained from the transcribing service. Copies of all documents introduced will be available from SWPA upon request, for a fee. Written comments on the Proposed Integrated System Rates and the Sam Rayburn Dam Rate are due on or before February 16, 1988. Ten copies of the written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

Following review of the oral and written comments and the information gathered in the course of the proceedings, the Administrator will submit the rate proposals and the Power Repayment Studies and Rate Design Study for the Integrated System and for the Sam Rayburn Dam project, in support of the proposed rates, to the Under Secretary of Energy for confirmation and approval on an interim basis and to the FERC for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increases before making a final decision.

Issued in Tulsa, Oklahoma, this 4th day of November 1987.

**Ronald H. Wilkerson,**

*Administrator, Southwestern Power Administration.*

[FR Doc. 87-26595 Filed 11-17-87; 8:45 am]

BILLING CODE 6450-01-M

## Western Area Power Administration

## Floodplains/Wetlands Involvement for New Waddell-Westwing 230-kV Transmission Line Project; Maricopa County, AZ

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Floodplains/wetlands involvement and opportunity to comment.

**SUMMARY:** The Department of Energy (DOE), Western Area Power Administration (Western), is proposing to construct the New Waddell-Westwing 230 kilovolt (kV) Transmission Line. Pursuant to the requirements of DOE's "Compliance with Floodplains/Wetlands Environmental Review Requirements," 10 CFR Part 1022, Western has determined that this project would involve activities within a floodplain area. Two segments of the right-of-way (ROW) are located in a Zone A floodplain. Western will prepare a floodplain assessment as an integral part of the environmental assessment (EA) covering the project.

The transmission line will be located in Maricopa County, Arizona, and will connect New Waddell Dam on the Agua Fria River to the Westwing Substation about 12 miles southwest of the dam along the river. The transmission line

will be constructed using steel lattice structures and will parallel two Arizona Public Service Company steel lattice 500-kV transmission lines for most of its approximately 12-mile length. The new line will be owned by the Bureau of Reclamation (BuRec); however, construction, operation, and maintenance will be provided by Western.

A final environmental impact statement (EIS) was prepared by BuRec to describe the nine alternatives for the construction and operation of the Regulatory Storage Division of the Central Arizona Project (CAP) (INT-FES-84-4). Construction of the CAP Regulatory Storage Division was authorized by section 301(a)(3) of the Colorado River Basin Project Act of 1968 (Pub. L. 90-537). The EIS was supported by 23 technical reports which covered planning, designs, public involvement, social and environmental assessment, economics, and hyrological analysis. New Waddell Dam is one of the authorized construction projects which is a part of the agency's selected plan, known as Plan 6. Since the new line is basically in the study area of the EIS, Western will reference the EIS. In addition, Western is currently conducting an EA to complete the National Environmental Policy Act of 1969 (NEPA) compliance for the new 230-kV line.

The floodplain maps prepared by the Federal Emergency Management Agency show that the first mile of the route southeast of the dam lies within a Zone A floodplain associated with the Agua Fria River. Zone A indicates a 100-year floodplain. Also, the route further down crosses the Agua Fria River bed which is dry unless water is being released at the dam. As both of these areas are located just downstream of the New Waddell Dam, which regulates flows in the Agua Fria River, it is assumed that the risk of flooding is remote. The majority of the line route is outside the floodplain area. Structures that may have to be located in these two areas will be designed with floodproofing measures, such as deeper footings, to prevent washout.

**DATES:** Public comments or suggestions on Western's proposal in the floodplain area are invited. Any comments are due December 3, 1987.

**ADDRESSES:** Comments or suggestions concerning this proposal should be sent to:

Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3200

Mr. Gary W. Frey, Director of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1527

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Saylor, Environmental Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3244.

Issued in Golden, Colorado, November 9, 1987.

**William H. Clagett,**

*Administrator.*

[FR Doc. 87-26551 Filed 11-17-87; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-3292-1]**

### Science Advisory Board, Environmental Health Committee, Drinking Water Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Drinking Water Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on December 3-4, 1987 in Room 121-126 of the Andrew Breidenbach Environmental Research Center of the U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268. The meeting will start at 8:30 a.m. on December 3rd and adjourn no later than 4:00 p.m. on December 4th.

The purpose of the meeting will be to review the Health Effects Research Program on Drinking Water Distribution Systems. The Subcommittee will hear presentations concerning the research program on December 3rd and will discuss the program on December 4th.

An issue paper has been prepared for this review and is available for Mr. Bala Krishnan, Office of Research and Development (RD-681) U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 382-5895.

The meeting will be open to the public. Any member of the public wishing to attend the meeting must contact Dr. C. Richard Cothern, Executive Secretary to the Commitee, or Ms. Reneé Butler, by telephone at (202) 382-2552 or by mail to: Science Advisory Board (A-101-F), 401 M Street SW., Washington, DC 20460 no later than c.o.b. on November 27, 1987.

Dated: November 11, 1987.

**Terry F. Yosie,**

*Director, Science Advisory Board.*

[FR Doc. 87-26562 Filed 11-17-87; 8:45 am]

BILLING CODE 6560-50-M

**[OPTS-140091; FRL-3292-6]**

### Access to Confidential Business Information By Kearney/Centaur Division and Midwest Research Institute

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor, Kearney/Centaur Division (KCD) of Washington, DC and KCD's subcontractor, Midwest Research Institute (MRI) of Kansas City, MO, for access to information which has been submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**DATE:** Access to the confidential data submitted to EPA will occur no sooner than November 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

**SUPPLEMENTARY INFORMATION:** Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, and 8 of TSCA.

Under contract No. 68-02-4297, EPA's contractor KCD, Suite 700, 1400 I Street, NW., Washington, DC and KCD's subcontractor, MRI, 425 Volker Boulevard, Kansas City, MO will assist the Office of Toxic Substances' Economics and Technology Division in performing economic and regulatory impact analyses primarily addressing costs, economic impacts, benefits and regulatory impacts of actions proposed or taken under sections 5 and 8 of TSCA.

In a previous notice published in the Federal Register of October 24, 1986 (51 FR 37786), EPA announced, under contract No. 68-02-3980, authorization by KCD for access to TSCA CBI: to perform functions similar to those under this contract.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract No. 68-02-4297, KCD and MRI will require access to CBI submitted to EPA under TSCA to successfully perform the duties specified under the contract. KCD and MRI personnel will be given access to information submitted under sections 5 and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 5 and 8 of TSCA that EPA may provide KCD and MRI access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters or at the contractor and subcontractor facilities identified above. Upon completing review of the CBI materials under the contract, KCD and MRI will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1990.

KCD and MRI have been authorized for access to TSCA CBI at their facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved security plans prepared by KCD and MRI and has performed the required inspection of their facilities and found them to be in compliance with the requirements of the manual. Contractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: November 10, 1987.

**Susan F. Vogt,**

*Acting Office Director, Office of Toxic Substances.*

[FR Doc. 87-26564 Filed 11-17-87; 8:45 am]

BILLING CODE 6560-50-M

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**[OPTS-140087; FRL-3292-5]**

## Access to Confidential Business Information by Midwest Research Institute

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor, Midwest Research Institute (MRI) of Cary, NC, for access to information which has been submitted to EPA under sections 6 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**DATE:** Access to the confidential data submitted to EPA will occur no sooner than November 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

**SUPPLEMENTARY INFORMATION:** Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or chemical mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, and 8 of TSCA.

Under contract numbers 68-02-3817 and 68-02-4379, EPA's contractor MRI, 401 Harrison Oakes Boulevard, Suite 350, Cary, NC will assist the Office of Air Quality Planning and Standards in the development of air pollution emission standards for chromium air pollutants under the authority of section 6 of TSCA and sections 111 and 112 of the Clean Air Act.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract numbers 68-02-3817 and 68-02-4379 MRI will require access to CBI submitted to EPA under TSCA to successfully perform the duties specified under the contracts. MRI personnel will be given access to all information submitted under sections 6 and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide MRI access to these CBI materials on a need-to-know basis. All access to TSCA CBI under these contracts will take place at EPA and contractor facilities.

Clearance for access to TSCA CBI under these contracts is scheduled to expire on September 30, 1988.

MRI being authorized to transfer CBI materials from EPA Headquarters to its facilities will, upon completing review of the CBI materials, return them to EPA. MRI will be authorized for such access under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has received MRI's security plans and will perform the required inspections of its facilities before CBI access at the site will be allowed. MRI personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access TSCA CBI.

Dated: November 10, 1987.

**Susan F. Vogt,**

*Acting Office Director, Office of Toxic Substances.*

[FR Doc. 87-26563 Filed 11-17-87; 8:45 am]

BILLING CODE 6560-50-M

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**[FRL-3291-5]**

## Volusia-Floridan Aquifer in Volusia, Flagler and Putnam Counties, FL; Sole Source Aquifer; Final Determination

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that, pursuant to section 1424(e) of the Safe Drinking Water Act as amended, the Regional Administrator of the United States Environmental Protection Agency (EPA) Region IV has determined that the Volusia-Floridan Aquifer underlying Volusia and portions of Flagler and Putnam Counties, Florida, is the sole or principal source of drinking water for public water supply systems and individual wells in Volusia County and designated portions of Flagler and Putnam Counties and that this aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, all federally financially assisted projects constructed in the Volusia-Floridan Aquifer designated area will be subject to EPA review to ensure that these projects are designed and constructed such that they do not contaminate the Aquifer so as to create a significant hazard to public health.

The boundary of the designated area may be generally described as follows:

The northern boundary of the designated area begins at the southeast corner of Flagler Beach State Park and curves south and west through the community of Karona at U.S. Highway Route Number 1. The boundary continues southwest, west and northwest to the intersection of Haw Creek and Crescent Lake. The boundary then follows the west bank of Crescent Lake to Dunn's Creek and follows the west bank of Dunn's Creek to its

intersection with the St. John's River. The border of the designated area then follows the east bank of the St. John's to Lake George and the east bank of Lake George to its intersection with the boundary of Volusia County. The boundary of the designated area and the boundary of Volusia County are congruent for the remainder of the area's western and southern boundaries to the Atlantic Ocean. The area's eastern boundary is the Atlantic Ocean.

**DATES:** This determination shall be promulgated for purposes of judicial review at 1:00 pm Eastern Time on December 2, 1987.

**ADDRESSES:** The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Ground-Water Protection Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

**FOR FURTHER INFORMATION CONTACT:** James S. Kutzman, Chief, Ground-Water Protection Branch, Environmental Protection Agency, Region IV at 404/347-3866.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Title XIV, Public Health Service Act, as amended by the Safe Drinking Water Act, Pub. L. 93-523, section 1424(e) states as follows:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the Aquifer.

On June 18, 1982, a petition was presented on behalf of the Environmental Council of Volusia County, Florida requesting designation of the Volusia-Floridan Aquifer as a sole source of drinking water. A notice was published in the **Federal Register** on December 8, 1982 which acknowledged receipt of the petition and solicited comments until February 14, 1983. On April 14, 1983, a notice was published in the **Federal Register** announcing a public hearing to be held on May 11, 1983. A public hearing was conducted on that day form 9:30 am to 12:00 noon and from 7:00 pm to 9:00 pm in the City Hall Council Chambers, 301 South Ridgewood Avenue, Daytona Beach, Florida and the public was permitted to submit comments and information on the petition until May 25, 1983.

EPA Region IV, under regulations then in effect, forwarded the petition with supporting documentation and a recommendation for approval to the EPA Administrator on September 30, 1984. The regulations having been revised and the authority to designate sole source aquifers having been delegated to Regional Administrators, the Volusia-Floridan designation petition was returned to EPA Region IV March 30, 1987, for decision by the Regional Administrator.

## II. Basis for Determination

Among the factors to be considered by the Regional Administrator in connection with the designation of a sole source aquifer are: (1) Whether the Aquifer is the sole or principal source of drinking water of the area petitioned for designation and (2) whether contamination of the Aquifer would create a significant hazard to public health. Following review of the petition, the technical information available to this Agency, and comments received from the public, the Regional Administrator has made the following findings which are the basis for the determination noted above:

A. The Volusia-Floridan Aquifer currently serves as the sole or principal source of drinking water for more than 277,000 persons in the designated area.

B. The Volusia-Floridan Aquifer currently provides more than 50 percent of the drinking water for the designated area, and in fact, provides nearly 100 percent of the area's drinking water.

C. There is no existing alternative source of drinking water or combination of sources, which could provide 50 percent or more of the drinking water to the designated area, nor is there any available, cost effective, future source capable of supplying the drinking water requirements of the area now served by the Volusia-Floridan Aquifer.

D. The portion of the Floridan Aquifer designated by the petition as the Volusia-Floridan Aquifer is hydraulically isolated from the rest of the Floridan Aquifer. It has been referred to as a distinct "island" of fresh water surrounded by saline, non-potable water. There are two major water bearing units in the designated area; the surficial or water-table acquifer and beneath it the Volusia-Floridan Aquifer. The surficial aquifer is composed of about 25 to 80 feet of unconsolidated sands, shells and clays, mostly of Pleistocene and Recent age. The surficial aquifer is recharged by rain water. The underlying aquifer is composed primarily of limestones and dolomitic limestones of Eocene age. The total thickness of the Aquifer is estimated to be in excess of six hundred feet. Separating the surficial and Volusia-Floridan aquifers is a discontinuous bed of Miocene clay which acts as a leaky confining layer. The Volusia-Floridan Aquifer is recharged by water from the surifical aquifer leading through the Miocene clays. As a result of the highly permeable surficial aquifer and the leaky nature of the Miocene clay separating layer, the Volusia-Floridan Aquifer is susceptible to contamination through its recharge zone from a number of sources.

E. The recharge zones for the Volusia-Floridan Aquifer consist of the sandy terraces and ridges of Volusia County and are entirely dependent upon local rainfall in the immediate vicinity of Volusia County for recharge. Therefore, there is no stream flow source zone as such.

F. After reviewing the public hearings and written comments, there were no significant adverse comments to contradict any of the above conclusions.

## III. Description of the Volusia-Floridan Aquifer in Volusia County and Portions of Flagler County and Putnam County, Florida and its Recharge Zone

Section 1424(e) requires that after publication of the Administrator's determination:

> * * * no commitment of federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a *significant hazard to public health* * * *.

The recharge zone is that area through which water enters or could enter into the Aquifer. The area in which projects may be reviewed is the area encompassed by: (1) The boundary of the Volusia-Floridan Aquifer; and (2) its recharge zone.

The portion of the Floridan Aquifer designated by the petition as the Volusia-Floridan Aquifer is hydraulically isolated from the rest of the Floridan Aquifer. It has been referred to as a distinct "island" of drinking quality water surrounded by saline, non-potable water. This "island" is centered over Volusia County with some overlap into Flagler and Putnam Counties. Water in the Volusia-Floridan

Aquifer has a total dissolved solids content of generally less than 100 mg/1 and chloride concentrates less than the 25 mg/1 level requires by the National Secondary Drinking Water Regulations.

There are two major water bearing units in Volusia County and the surrounding vicinity, the water table (non-artesian) aquifer and the Floridan (artesian) aquifer. The shallow, water table aquifer is composed of from about 25 to 80 feet of unconsolidated sands, shell and clays, mostly of Pleistocene and Recent age. The Floridan or artisian aquifer is composed primarily of limestones and dolomitic limestones of Eocene age. The total thickness of this Aquifer is estimated to be in excess of 600 feet. Dense and relatively impermeable zones occur within the rock sequence, and where continuous, divide the Aquifer into an upper and lower part. These dense zones retard the verticle flow of groundwater and appear to separate saline water in the lower parts of the Aquifer from fresher, better quality water in the upper part. Separating the water table aquifer from the Floridan Aquifer is a discontinuous bed of Miocene clay which acts as a leaky confining layer. Leakage can occur upward from the Floridan or downward from the water table aquifer, depending upon relative pressure heads.

The mechanism responsible for the existence of the Volusia-Floridan Aquifer is one of localized recharge governed by topography and the nature of the overlying materials. In general, the topography of Volusia County consists of a series of terraces and ridges of marine, karstic and shore-line origin, beginning at sea level at the eastern edge of the County, rising in step-wise fashion to an elevation of approximately 100 feet and then dropping to almost sea level at the St. Johns River on the western slope of the County. In parts of Volusia County, the confining clay bed is apparently more permeable and water can flow directly from the water table aquifer into the Floridan. In other locations, the material impedes flow and recharge only occurs when and where the water table level is high enough to exert enough pressure to force downward movement. This occurs wherever the water table level is higher than the potentiometric (or water) level in the Floridan Aquifer, especially in the sand ridges.

The recharge zones for the Volusia-Floridan Aquifer consist of the sandy terraces and ridges of Volusia County and are entirely dependent upon local rainfall in the immediate vicinity of Volusia County for recharge. Therefore, there is no stream flow source zone, as such. Within Volusia County, 122 public water systems draw from the Volusia-Floridan Aquifer which supplies all public systems in the County. In other surrounding counties where Floridan Aquifer water does not meet drinking water standards, the water table aquifer and surface water sources are used for water supply. In Brevard County to the south, the water table aquifer is used for water supply but the water must be treated for iron content removal.

## IV. Information Utilized in Determination

The information utilized in this determination includes the petition, written and verbal comments submitted by the public and various technical publications. These are all available to the public and may be inspected during normal business hours at the offices of the U.S. Environmental Protection Agency, Region IV, located at 345 Countland Street, NE., Atlanta, Georgia, 30365. This material is retained in the files of the Ground-Water Protection Branch.

While the guidance provided to both petitioners and reviewers of sole source aquifer designation petitions has been revised since the submission of the petition to designate the Volusia-Floridan Aquifer was received, EPA has determined that review and action on the petition should be taken under the guidance in force at the time of receipt.

## V. Project Review

EPA Region IV is working with the federal agencies that may in the future provide financial assistance to projects in the area of concern. Interagency procedures and Memoranda of Agreement are in force or are being developed through which EPA Region IV will be notified of proposed commitments by federal agencies for projects which could contaminate the Volusia-Floridan Aquifer. EPA Region IV will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. When reviewing projects, EPA will consult with state and local control agencies to ensure that their views can be given full consideration and that their mechanisms for protecting the Aquifer are utilized to the maximum extent.

Should the Regional Administrator determine that a project may contaminate the Aquifer so as to create a significant hazard to public health, no commitment for federal financial assistance may be entered into.

However, a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not contaminate the Aquifer. Federal financial assistance to construct the project may be committed when planning and design changes have been negotiated that make the project acceptable to EPA Region IV.

## VI. Summary and Discussion of Public Comments

Most of the comments received during the public hearing were in favor of the designation. Only one written comment was received following the public hearing; this was from the City of Daytona Beach, Florida, and included comments on the petition by a consulting engineering firm. Negative comments received on the designation were based on the premise that adequate protection of the Aquifer is provided by state and local government agencies. This comment does not have bearing on the criteria for designating sole source aquifers or the withholding of federal financial assistance.

The comments and responses were summarized by EPA Region IV in a document titled *Summary Response to Public Comment* prepared in May 1984. This document has been revised and together with the transcript of the public hearing and the written comment received, is available for public inspection during normal business hours at the Ground-Water Protection Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

## VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 650(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. The only such entities that could be affected are those that request federal financial assistance for projects which have the potential for contaminating the Volusia-Floridan Aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small, isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the Aquifer is anticipated; accordingly, the number of affected small entities will be minimal. Most projects subject to this review will be preceded by a ground-water impact assessment required pursuant to other federal laws such as the National Environmental Policy Act (NEPA) as amended, 42 U.S.C. 4321, *et seq.* These reviews, together with the sole source aquifer review, will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving

financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the Aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 or more on the economy, will not cause any major increase in costs or prices and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects Volusia County and portions of Flagler and Putnam Counties, Florida. It provides an additional review of groundwater protection measures for only those projects which request financial assistance.

Dated: November 5, 1987.

**Lee A. Dehihns,**

*Acting Regional Administrator.*

[FR Doc. 87-26565 Filed 11-17-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Travel Reimbursement Program; Publication of Report

**AGENCY:** Federal Communications Commission.

**ACTION:** Publishing of report on Travel Reimbursement Program.

**SUMMARY:** In Pub. L. 97-259 the Congress authorized the Federal Communications Commission to accept reimbursement from non-government organizations for travel of employees of the Commission. The Federal Communications Commission must keep records of reimbursable travel by event and prepare a report of all reimbursements allowed. Copies of each report will be provided to the Senate Committee on Appropriations, House Committee on Appropriations, Senate Committee on Commerce, Science, and Transportation, and the House Committee on Energy and Commerce. In addition, the Federal Communications Commission must publish each report in the **Federal Register.**

**DATE:** This report is for the period July 1, 1987 through September 30, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Debora Smith, Office of the Managing Director, (202) 632-6900.

**SUPPLEMENTARY INFORMATION:** The report for the period July 1, 1987 through September 30, 1987 is as follows:

**Federal Communications Commission, Travel Reimbursement Program, July 1, 1987—September 30, 1987, Summary Report**

| | |
|---|---|
| Total number of sponsored events | 12 |
| Total number of sponsoring organizations | 12 |
| Total number of commissioners/employees attending | 16 |
| Total amount of reimbursement expected: | |
| Transportation | $6,493.15 |
| Subsistence | 6,000.50 |
| Other expenses | 943.00 |
| Total | 13,436.65 |

**Federal Communications Commission, Travel Reimbursement Program, Individual Event Report**

Sponsoring Organization: American Radio Relay League Inc., International Secretariat of the International Radio Union, Administrative Headquarters; Newington, Connecticut 06111.

Date of Event: July 10-12, 1987.

Description of the Event: To participate in the American Radio League National Convention in Atlanta, Georgia.

Commissioners Attending: N/A.

Other Employee(s) Attending: Ralph A. Haller, Deputy Chief—Private Radio Bureau; John B. Johnston, Supervisory Electronic Engineer—Private Radio Bureau.

Amount of Reimbursement:

| | |
|---|---|
| Transportation | $375.00 |
| Subsistence | 475.00 |
| Other expenses | 50.00 |
| Total | 900.00 |

**Federal Communications Commission, Travel Reimbursement Program, Individual Event Report**

Sponsoring Organization: Alaska Broadcasters Association, P.O. Box 102424, Anchorage, AK 99510.

Date of the Event: August 12-15, 1987.

Description of the Event: To attend Alaska Broadcasters Association's Annual Convention in Anchorage, AK.

Commissioners Attending: N/A.

Other Employee(s) Attending: Charles W. Kelley, Chief, Enforcement Division—Mass Media Bureau.

Amount of Reimbursement:

| | |
|---|---|
| Transportation | $669.37 |
| Subsistence | 610.00 |
| Other expenses | 100.00 |
| Total | 1,379.37 |

**Federal Communications Commission, Travel Reimbursement Program, Individual Event Report**

Sponsoring Organization: Arkansas Public Service Commission, 1000 Center, P.O. Box C-400, Little Rock, Arkansas 72203.

Date of the Event: September 22, 1987.

Description of the Event: To participate in a panel presentation at the Arkansas Telephone Convention in Hot Springs, Arkansas.

Commissioners Attending: N/A.

Other Employee(s) Attending: Cindy Schonhaut, Attorney-Adviser—Common Carrier Bureau.

Amount of Reimbursement:

| | |
|---|---|
| Transportation | $334.00 |
| Subsistence | 315.00 |
| Other expenses | 143.00 |
| Total | 792.00 |

**Federal Communication Commission, Travel Reimbursement Program, Individual Event Report**

Sponsoring Organization: AT & T, 295 North Maple Avenue, Basking Ridge, NJ 07920.

Date of the Event: July 8, 1987.

Description of the Event: To participate in the 1987 Great Lakes Conference in White Sulphur Springs, West Virginia.

Commissioners Attending: N/A.

Other Employee(s) Attending: Thomas C. Spavins, Deputy Chief—Office of Plans and Policy.

Amount of Reimbursement:

| | |
|---|---|
| Transportation | $102.50 |
| Subsistence | 150.00 |
| Other expenses | 175.00 |
| Total | 427.50 |

**Federal Communications Commission, Travel Reimbursement Program, Individual Event Report**

Sponsoring Organization: California Broadcasters Association (CBA), 1127 11th Street, Suite 730, Sacramento, California 95814.

Date of the Event: July 27, 1987.

Description of the Event: To participate in the CBA summer convention in Monterey, California.

Commissioners Attending: Commissioner Dennis R. Patrick.

Other Employee(s) Attending: N/A.

Amount of Reimbursement:

| | |
|---|---|
| Transportation | $424.00 |
| Subsistence | $124.00 |
| Other expenses | $25.00 |
| Total | 573.00 |

**Federal Communications Commission, Travel Reimbursement Program, Individual Event Report**

Sponsoring Organization: Cardiff, 1990 M. St. NW., Suite 500, Washington, DC 20036.
Date of the Event: September 29—October 1, 1987.
Description of the Event: To attend the Land Mobile Expo in Atlanta, Georgia.
Commissioners Attending: N/A.
Other Employee(s) Attending: Gary L. Stanford, Supervisory Electronics Engineer—Private Radio Bureau; Ralph A. Haller, Deputy Chief—Private Radio Bureau; Richard J. Shiben, Chief—Land Mobile & Microwave Division.
Amount of Reimbursement:

| | |
|---|---|
| Transportation | $784.28 |
| Subsistence | 612.00 |
| Other expenses | 80.00 |
| Total | 1,476.28 |

**Federal Communications Commission, Travel Reimbursement Program, Individual Event Report**

Sponsoring Organization: Dow, Lohnes & Albertson, 1255 Twenty-Third Street NW. Washington, DC 20037
Date of the Event: September 23, 1987.
Description of the Event: To speak at the Great Lakes Cable Expo in Indianapolis, Indiana.
Commissioners Attending: N/A.
Other Employee(s) Attending: Stephen R. Ross, Supervisory General Attorney—Mass Media Bureau.
Amount of Reimbursement:

| | |
|---|---|
| Transportation | $236.00 |
| Subsistence | 192.00 |
| Other expenses | 30.00 |
| Total | 458.00 |

**Federal Communications Commission, Travel Reimbursement Program, Individual Event Report**

Sponsoring Organization: Michigan Association of Broadcasters, 1020 Long Blvd., Suite 12, Lansing, Michigan 48910.
Date of the Event: August 5–7, 1987.
Description of the Event: To address the Michigan Association of Broadcasters Annual Convention in Bellaire, Michigan.
Commissioners Attending: Commissioner James H. Quello.
Other Employee(s) Attending: N/A
Amount of Reimbursement:

| | |
|---|---|
| Transportation | $548.00 |
| Subsistence | 300.00 |
| Other Expenses | 120.00 |
| Total | 968.00 |

**Federal Communications Commission, Travel Reimbursement Program, Individual Event Report**

Sponsoring Organization: National Association of Broadcasters (NAB), 1771 N. Street NW., Washington, DC 20036.
Date of the Event: September 9–12, 1987.
Description of the Event: To participate in the NAB Radio 87 Convention in Anaheim, California.
Commissioners Attending: N/A
Other Employee(s) Attending: Robert F. Cleveland, Physical Scientist—Office of Engineering & Technology; John D. Sadler, Communications Industry Specialist—Mass Media Bureau.
Amount of Reimbursement:

| | |
|---|---|
| Transportation | $656.00 |
| Subsistence | 676.50 |
| Other Expenses | 90.00 |
| Total | 1,422.50 |

**Federal Communications Commission, Travel Reimbursement Program, Individual Event Report**

Sponsoring Organization: Office of Public Utilities Economics, the University of Georgia, Athens, Georgia 30602.
Date of the Event: September 1–4, 1987.
Description of the Event: To participate in the 7th Annual Southern Regional Public Utilities Conference in Atlanta, Georgia.
Commissioners Attending: N/A.
Other Employee(s) Attending: Thomas C. Spavins, Deputy Chief—Office of Plans and Policy.
Amount of Reimbursement:

| | |
|---|---|
| Transportation | $204.00 |
| Subsistence | 204.00 |
| Other expenses | 0 |
| Total | $408.00 |

**Federal Communications Commission, Travel Reimbursement Program, Individual Event Report**

Sponsoring Organization: Southern Cable Television Association Inc., 6175 Barfield Road, Suite 220, Atlanta, Georgia 30328.
Date of the Event: September 1, 1987.
Description of the Event: To participate in the Eastern Cable show in Atlanta, Georgia.
Commissioners Attending; N/A.
Other Employee(s) Attending: Richard L. Kalb, Attorney-Advisor—Mass Media Bureau.
Amount of Reimbursement:

| | |
|---|---|
| Transportation | $270.00 |
| Subsistence | 306.00 |
| Other expenses | 30.00 |
| Total | $606.00 |

**Federal Communications Commission, Travel Reimbursement Program, Individual Event Report**

Sponsoring Organization: Telecommunication Technology Committee, Nishi-Shimbashi Abe Bldg. 2 F, 3–12–10 Nishi Shimbashi, Nimato Ku Tokyo 105, Japan.
Date of the Event: July 1–9, 1987.
Description of the Event: To participate in the International Symposium on Telecommunications in Tokyo, Japan.
Commissioners Attending; Commissioner Patricia Diaz Dennis.
Other Employee(s) Attending: N/A.
Amount of Reimbursement:

| | |
|---|---|
| Transportation | $1,890.00 |
| Subsistence | 2,036.00 |
| Other expenses | 100.00 |
| Total | $4,026.00 |

Federal Communications Commission.
**William J. Tricarico,**
*Secretary.*
[FR Doc. 87–26517 Filed 11–17–87; 8:45 am]
BILLING CODE 6712–01–M

## FEDERAL HOME LOAN BANK BOARD

### Tri-County Savings and Loan Assn., Camden, NJ; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in 406(c) (1) (B) of the National Housing Act, as amended, 12 U.S.C. 1729(c) (1) (B) (1982), the Federal Savings and Loan Insurance Corporation as sole receiver for Tri-County Savings and Loan Association, Camden, New Jersey, on November 13, 1987.

Dated: November 13, 1987.
By the Federal Home Loan Bank Board.
**John M. Buckley, Jr.,**
*Secretary.*
[FR Doc. 87–26601 Filed 11–17–87; 8:45 am]
BILLING CODE 6720–01–M

## FEDERAL MARITIME COMMISSION

### Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice

appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224–004177–006

*Title:* Port of Seattle Terminal Agreement

*Parties:* Port of Seattle Stevedoring Services of America

*Synopsis:* The proposed agreement amendment, with respect to the January 1, 1990, rental renegotiation agreement provision, changes the date by which the parties must agree on the adjusted rent from November 1, 1987, to July 1, 1989.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87–26580 Filed 11–17–87; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(B)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/19/87 AND 11/6/87

| Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity | PMN No. | Date terminated |
|---|---|---|
| (1) Waste Management, Inc., Waste Systems, Inc., Waste Systems, Inc.. | 87–2446 | Oct. 19, 1987 |
| (2) Cablevision Systems Corp., Time Inc., GWC 42, Inc. | 87–2482 | Do. |
| (3) Cablevision Systems Corp., Houston Industries Inc., GWC 42, Inc. | 87–2483 | Do. |
| (4) Donald J. Trump, Alexander's Inc., Alexander's Inc. | 87–2532 | Do. |
| (5) Tate & Lyle PLC, Randall D. Heath, H&W Building Products, Inc. | 88–0064 | Do. |
| (6) Novel Holdings Limited, Forstmann & Co., Inc., Forstmann & Co., Inc. | 88–0072 | Do. |
| (7) Tate & Lyle PLC, Lowell E. Walker, H & W Building Products, Inc. | 88–0083 | Do. |
| (8) B/S Investments, PPG Industries, Inc., Kalium Chemicals Division of PPG Canada, Inc. | 87–2490 | Oct. 21, 1987 |
| (9) Huhtamaki Oy, Sara Lee Corp., Hollywood Brands, Inc. | 87–2495 | Do. |
| (10) Stephen B. Browne, Brown Bottling Co., Inc., Brown Bottling Co., Inc. | 87–2500 | Do. |
| (11) Stephen B. Browne, Commercial Las Alturas, S.A., Fairwinds, U.S.A., Inc. | 87–2507 | Do. |
| (12) Gargour Holdings, S.A., Bouygues, S.A., Monarch Tile Manufacturing, Inc. | 88–0005 | Do. |
| (13) Steward A. Resnick, The Purdential Insurance Co. of America, The Prudential Insurance Co. of America. | 88–0012 | Do. |
| (14) Energas Co., Texas American Energy Corp., Western KY Gas Utility Corp. and Western KY Gas Res. Inc. | 88–0048 | Do. |
| (15) Shaw Industries, Inc., West Point-Pepporell, Inc., Carpet & Rug Division. | 88–0058 | Do. |
| (16) Dr. K. Philip Hwang, Mr. Young Ho Kim, Advanced Transducer Devices, Inc.. | 88–0074 | Do. |
| (17) Kenneth B. Ross, J.C. Penney Co., Inc., J.C. Penney Co., Inc. | 87–2518 | Oct. 22, 1987 |
| (18) Arrow Electronics, Inc., Ducommun Inc., Electronics Distribution Business. | 88–0052 | Do. |
| (19) Ducommun Inc., Arrow Electronics, Inc., Arrow Electronics, Inc. | 88–0053 | Do. |
| (20) Arrow Electronics, Inc., Ducommun Inc., Ducommun Inc. | 88–0056 | Do. |
| (21) William Davidson, Continental Mortage Investors, American International Manufacturing Corp. | 88–0076 | Do. |
| (22) Toshio Kinoshita, La Costa Hotel and Spa, La Costa Hotel and Spa. | 88–0077 | Do. |
| (23) General Electric Co., Walbro Corp., Walbro Corp. | 88–0092 | Do. |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/19/87 AND 11/6/87—Continued

| Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity | PMN No. | Date terminated |
|---|---|---|
| (24) Health and Rehabilitation Properties Trust, Gerard M. Martin, Greenery Rehabilitation Group, Inc. | 88–0097 | Do. |
| (25) Berkshire Hathaway, Inc., Salomon Inc., Salomon Inc. | 88–0104 | Do. |
| (26) Novel Holdings Limited, Forstmann & Co., Inc., Forstmann & Co., Inc. | 88–0110 | Do. |
| (27) Transamerica Corp., Borg-Warner Holdings Corp., BWAC Inc. | 88–0117 | Do. |
| (28) The Scottish Heritable Trust, P.L.C., Washington Homes, Inc., Washington Homes, Inc. | 87–2492 | Oct. 23, 1987 |
| (29) Kinder-Care, Inc., Mervyn Barstein, Bargain-Town, U.S.A., Inc. | 88–0003 | Do. |
| (30) Time Incorporated, Harcourt Brace Jovanovich, Inc., The History Book Club, Inc. | 88–0046 | Do. |
| (31) General Electric Co., Gelco Corporation, Gelco Corporation. | 88–0070 | Do. |
| (32) PacifiCorp, Equitec Financial Group, Inc., Equitec Financial Group, Inc. | 88–0084 | Do. |
| (33) Lucky Stores, Inc., Lucky Stores, Inc., Lucky Stores, Inc. | 88–0089 | Do. |
| (34) Pacificorp, Equitec Financial Group, Inc., Equitec Financial Group, Inc. | 88–0100 | Do. |
| (35) Societe National Elf Aquitaine, Viking Capital Corporation of America, Viking Capital Corporation of America. | 87–2529 | Oct. 26, 1987 |
| (36) Cadbury Schweppes Inc., HP Bulmer Holdings P.L.C., Red Cheek Limited.. | 88–0078 | Do. |
| (37) CEVAXS Corporation, The Philp Co. Trust, The Philp Co. Trust. | 88–0080 | Do. |
| (38) Phicom, plc, International Minerals and Chemical Corp., Forma Scientific, Inc. | 88–0111 | Do. |
| (39) William Dean Singleton, The Times Mirror Co., The Denver Post Corp. | 88–0142 | Do. |
| (40) Avon Products, Inc., Milton Stern, Parfums Stern, Inc. | 87–2514 | Oct. 27, 1987 |
| (41) Tarmac PLC, Chisman Co., Chisman Co. | 88–0021 | Do. |
| (42) Edward J. DeBartolo, Jr., Zayre Corp., Zayre Corp. | 88–0027 | Do. |
| (43) Forbes Healthmark, Beverely Enterprises, Inc., Beverly California Corp. | 88–0031 | Do. |
| (44) American Home Products Corp., Bristol-Myers Co., Animal Health Division, U.S. Pharmaceutical and. | 88–0040 | Do. |
| (45) Robert G. Gottsch, CHS Partners II, O.P., Swift Independent Holding Corp. | 88–0057 | Do. |
| (46) Cardinal Distribution, Inc., Donald F. Block, Popular Enterprises, Inc. | 88–0096 | Do. |
| (47) Teradyne, Inc., Zehntel, Inc., Zehntel, Inc. | 87–2333 | Oct. 28, 1987 |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/19/87 AND 11/6/87—Continued

| Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity | PMN No. | Date terminated |
|---|---|---|
| (48) Apothekernes Laboratorium A.S., Anac Holding Corp., Barre Parent Corp. | 87-2509 | Do. |
| (49) United States Sugar Corp., Sugar Acquisition Corp., Sugar Acquisition Corp. | 88-0113 | Do. |
| (50) Charles Stewart Mott Foundation, Sugar Acquisition Corp., Sugar Acquisition Corp. | 88-0114 | Do. |
| (51) Mott Children's Health Center, Sugar Acquisition Corp., Sugar Acquisition Corp. | 88-0115 | Do. |
| (52) Sequa Corporation, Atlantic Research Corp., Atlantic Research Corp. | 88-0130 | Do. |
| (53) First Financial Management Corporation, Endata, Inc., Endata, Inc. | 88-0011 | Oct. 29, 1987 |
| (54) Spartech Corporation, 1465 Utica Corp., 1465 Utica Corp. | 88-0025 | Do. |
| (55) First Financial Management Corporation, Endata, Inc., Endata, Inc. | 88-0028 | Do. |
| (56) American Express Company, Netter international, Ltd., Independence Holding Co. | 88-0047 | Do. |
| (57) The Walt Disney Company, Wrather Corp., Wrather Corp. | 88-0060 | Do. |
| (58) Brierley Investments Limited, Disney Acquisition Corp., Disney Acquisition Corp. | 88-0063 | Do. |
| (59) The Walt Disney Co., The Disney Acquisition Corp., The Disney Acquisition Corp. | 88-0068 | Do. |
| (60) The Walt Disney Co., Wrather Corp., Wrather Corp. | 88-0069 | Do. |
| (61) Fleet Financial Group, Inc., Bankers Trust New York Corp., Bankers Trust New york Corp. | 88-0132 | Do. |
| (62) Peter R. Harvey, Holly Sugar Corp., Holly Sugar Corp. | 88-0135 | Do. |
| (63) C. H. Beazer (Holdings) PLC, J. Ralph Squires, J. Ralph Squires. | 88-0152 | Do. |
| (64) The Gordon Gray Irrevocable Living Trust, DKM Broadcasting Corp., DKM Broadcasting Corp. | 88-0163 | Do. |
| (65) Emhart Corporation, Advanced Technology, Inc. of Delaware, Advanced Technology, Inc. of Delaware. | 88-0177 | Do. |
| (66) The Alro Trust, Decision Industries Corp., Decision Industries Corp. | 88-0006 | Oct. 30, 1987 |
| (67) John J. Rigas, Samuel A. Horvitz Testamentary Trust, Lorain Cable Television Inc./ Multi-Channel TV Cable Co. | 88-0050 | Do. |
| (68) Thomas Jefferson University, West Park Hospital, West Park Hospital. | 88-0071 | Do. |
| (69) Continental Cablevision, Inc., Nationwide Mutual Insurance Co., Nationwide Mutual Insurance Co. | 88-0075 | Do. |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/19/87 AND 11/6/87—Continued

| Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity | PMN No. | Date terminated |
|---|---|---|
| (70) Bowater Industries, plc, Rexham Corp., Rexham Corp. | 88-0124 | Do. |
| (71) Milton Petrie, Deb Shops, Inc., Deb Shops, Inc. | 88-0127 | Do. |
| (72) Northwest Corp., BancOklahoma Corp., Bank of Oklahoma, N.A. | 88-0147 | Do. |
| (73) Chevron Corp., Royal Dutch Petroleum Co., Royal Dutch Petroleum Co. | 88-0153 | Do. |
| (74) Royal Dutch Petroleum, Chevron Corp., Chevron Corp. | 88-0154 | Do. |
| (75) United Industrial Corporation Limited, Hilton Hotels Corp., Dallas Statler Hilton and Commerce Garage Joint Venture. | 88-0002 | Nov. 1, 1987 |
| (76) Oliver Stahel, Kay Corp., Kay Corp. | 88-0007 | Do. |
| (77) Glocester County Times, Inc. (Jean L. Scudder—UPE), MacLean Hunter Limited, The Houston Post. | 88-0009 | Nov. 2, 1987 |
| (78) Exxon Corp., The 1964 Simmons Trust, NL Industries, Inc. | 88-026 | Do. |
| (79) Hunter Environmental Services, Inc., Reynolds Smith & Hills Architects-Engineers-Planners Inc. | 88-0056 | Do. |
| (80) General Electric Co., Richmond Tank Car Co., Richmond Tank Car Co. | 88-0159 | Nov. 3, 1987 |
| (81) Kitiro Nojima, The Louisiana Land & Exploration Co., Kaluakoi Corp., Mosco Inc., Molokai Public Utilities Inc. | 88-0165 | Do. |
| (82) Bunzl plc, Chris A. Peifer, EESCO Capital Holdings, Inc. | 88-0034 | Nov. 4, 1987 |
| (83) Jardine Strategic Holdings Limited, The Bear Stearns Companies, Inc., The Bear Stearns Companies, Inc. | 88-0043 | Do. |
| (84) MLH Income Realty Partnership VI, The Prudential Insurance Company of America, The Prudential Insurance Company of America. | 88-0103 | Do. |
| (85) The Penn Central Corp., Kendavis Holding Co., Unit Rig & Equipment Co. | 88-0120 | Do. |
| (86) Stephen A. Wynn, Golden Nugget, Inc., Golden Nugget, Inc. | 88-0178 | Do. |
| (87) Southmark Corp., James E. Ferrell, Indian Wells Oil Co.; IWOC Inc. | 88-0161 | Nov. 5, 1987 |
| (88) The Southern Co., Oglethorpe Power Corp., Oglethorpe Power Corp. | 88-0164 | Do. |
| (89) Boston Capital Ventures Limited Partnership, Avon Products, Inc., Foster Medical Corp. | 88-0172 | Do. |
| (90) JWP Inc., Burton Reyer, Afgo Engineering Corp., Afgo/MTS, Inc. | 88-0198 | Do. |
| (91) Nortek, Inc., Linear Corp., Linear Corp. | 88-0220 | Do. |
| (92) Nortek, Inc., Linear Corp., Linear Corp. | 88-0221 | Do. |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/19/87 AND 11/6/87—Continued

| Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity | PMN No. | Date terminated |
|---|---|---|
| (93) Sisters of St. Joseph of Nazareth, The HealthSource Group, Inc., The HealthSource Group, Inc. | 87-2339 | Nov. 6, 1987 |
| (94) Air Express International Corporation, Pakhoed Holding NV, Pakhoed UK Limited, Pandair International BV. | 88-0079 | Do. |
| (95) Roy E. Disney and Patricia A. Disney, Wherehouse Entertainment, Inc., Wherehouse Entertainment, Inc. | 88-0101 | Do. |
| (96) Odyssey Partners, Amfac, Inc., Amfac, Inc. | 88-0126 | Do. |
| (97) Bessemer Securities Corp., Emery Air Freight Corp., Stant Holdings, Inc. | 88-0136 | Do. |
| (98) JWP Inc., Jerome H. Reyer, Afgo Engineering Corp., Afgo/MTS, Inc. | 88-0199 | Do. |
| (99) Massachusetts Water Resources Authority, General Dynamics Corp., Fore River Railroad Corp. | 88-0224 | Do. |
| (100) ERLY Industries Inc., Kraft, Inc., Kraft, Inc. | 88-0226 | Do. |
| (101) Grolier Incorportion, Regensteiner Publishing Enterprises, Inc., Regensteiner Publishing Enterprises, Inc. | 88-0227 | Do. |
| (102) A.A. Emmerson, Santa Fe Southern Pacific Corp., Santa Fe Pacific Timber Co. | 88-0237 | Do. |
| (103) Warburg, Pincus Capital Co., L.P. Mattel, Inc., Mattel, Inc. | 88-0240 | Do. |
| (104) Amer Group, Ltd., Hobart/McIntosh Paper Co., Hobart/McIntosh Paper Co. | 88-0250 | Do. |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580 (202) 326-3100.

By direction of the Commission.

**Emily H. Rock,**

*Secretary.*

[FR Doc. 87-26552 Filed 11-17-87; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committees; Meetings

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also

summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

**Cardiovascular and Renal Drugs Advisory Committee**

*Date, time, and place.* December 7 and 8, 1987, 9 a.m., National Institutes of Health, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

*Type of meeting and contact person.* Open public hearing, December 7, 1987, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5:30 p.m.; open committee discussion, December 8, 1987, 9 a.m. to 5:30 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFN-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730 or 419-259-6211.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of cardiovascular disorders.

*Agenda—Open public hearing.* Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the commiteee should communicate with the committee contact person.

*Open committee discussion.* The committee will discuss milrinone (corotrope), NDA 19-692, NDA 19-436, Sterling Drug Inc., for the treatment of congestive heart failure and guidelines for the treatment of congestive heart failure will be developed.

**Oncologic Drugs Advisory Committee**

*Date, time, and place.* December 7, 1987, 9 a.m. and December 8, 1987, 8 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

*Type of meeting and contact person.* Open committee discussion, December 7, 1987, 9 a.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; open committee discussion, December 8, 1987, 8 a.m. to 3:45 p.m.; David F. Hersey, Center for Drug Evaluation and Research (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of cancer.

*Agenda—Open public hearing.* Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

*Open committee discussion.* On December 7, 1987, the committee will discuss NDA 19-297 (novantrone) in combination with approved cytotoxic drugs for treatment of acute nonlymphocytic leukemia; novantrone for use in advanced metastatic breast cancer; and use of new phase II single agents with unknown anti-tumor activity as initial treatment of extensive small-cell lung cancer. On December 8, 1987, the committee will discuss supplemental NDA 11-719 high-dose methotrexate in combination with other cytotoxic drugs for adjuvant therapy of osteosarcoma; FDA requirements for approval of new drugs in the treatment of ovarian cancer; FDA advisory on investigational new drug safety reports; and treatment investigational new drug and sales regulations.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: November 10, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-26519 Filed 11-17-87; 8:45 am]

BILLING CODE 4160-01-M

## Public Health Service

### Reassessment of Medical Technology; External Insulin Infusion Pumps

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is performing a reassessment of the safety, clinical effectiveness, and indications for use of the external open-loop pumps for the subcutaneous infusion of insulin in treating diabetics. The subject technology was previously assessed by OHTA. A notice of that assessment appeared in the February 11, 1982 **Federal Register** Vol. 47 No. 29: 6376. That assessment which was published in 1984 recommended against Medicare coverage for the use of this device. The Health Care Financing Administration (HCFA) adopted that PHS recommendation. They have now requested that OHTA re-evaluate the use of this device for the treatment of Diabetes Mellitus.

Continuous subcutaneous insulin infusion (CSII) using an external infusion pump is proposed as one alternative means of achieving normalization of blood glucose. Insulin dependent ("Type I") diabetic patients have in some instances been treated using the GSII devices. However, non-insulin dependent ("Type II") diabetic patients have also been treated with external GSII pumps when in the judgment of the prescribing physician it was appropriate to do so. CSII systems are usually composed of a battery-powered electromechanical apparatus that pumps the insulin from its reservoir into the subcutaneous tissue at a predetermined rate. The reservoir may be a standard disposable insulin syringe, a specially designed syringe intended for exclusive use with a particular device, or a special flexible container for devices that function by peristaltic pumping action. Dose delivery is achieved using a control mechanism which includes means by which to set constant basal insulin flow and the capacity to provide a larger bolus dose on demand. Some units feature programmable functions that regulate variations in insulin flow throughout the day as well as alarm systems to warn of mechanical malfunctions.

This assessment seeks to answer the following questions: (a) Are CSII devices widely accepted as a safe and clinically effective method of delivering insulin to diabetic patients? (b) What types of external infusion pumps would be considered safe and clinically effective for continuous infusion of insulin in treating patients with Diabetes Mellitus? (c) Which patients, having what type and severity of diabetes mellitus are most likely to benefit from long term CSII treatment? (d) What benefits risk or complications are associated in continuous insulin therapy using the GSII infusion pump systems? (e) Are there categories of patients with Diabetes Mellitus for whom the pump is not suitable or for whom its use is contraindicated? (f) Are there conditions under which the use of these devices are deemed more appropriate than others? (g) Are there different features such as programmability or newer vs older designs or alarms that should be considered in evaluating these systems? (h) What are the implications of lock-out features for the external insulin infusion pumps used to treat diabetics? (i) Are there unique benefits of the CGII method of treating diabetics in terms of short- and long-term patient outcomes that have been demonstrated? While cost will not be a factor on which a coverage recommendation to HCFA will be based, this assessment also seeks to determine what is known about the cost of treating Diabetes Mellitus using CSII systems versus the conventional manual methods of insulin injection.

The PHS assessment process consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS and other agencies in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist HCFA in establishing a Medicare coverage policy. The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit from it, as well to the clinical acceptability and the effectiveness of this technology and extent of use is also being sought. Proprietary information is not being requested. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than January 15, 1988 or within 90 days from the date of publication of this notice.

Written material should be submitted to: Diane L. Adams, M.D., M.P.H., Office of Health Technology Assessment, 5600 Fishers Lane Room 18A-27, Rockville, MD 20857, (301) 433-4990.

Dated: November 4, 1987.

**Enrique D. Carter,**

*Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.*

[FR Doc. 87-26581 Filed 11-17-87; 8:45 am]

BILLING CODE 4160-17-M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CA-940-08-5410-10-ZBHH; CA 19822 and CA-940-08-5410-10-ZBHB; CA 19668]**

### California; Lifting of Segregative Effect and Order Providing for Opening of Reserved Mineral Estate

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and opening order.

**SUMMARY:** The private lands described in this order, aggregating 235.75 acres, were segregated and made unavailable for filings under the public land laws, including the mining laws, to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976. The purpose was to allow consolidation of surface and subsurface of mineral ownership where there were no known mineral values or in those instances where the reservation interferes with or precludes nonmineral development and such development is a more beneficial use of the land than the mineral development.

**FOR FURTHER INFORMATION CONTACT:** Judy Bowers, California State Office, Bureau of Land Management, 2800 Cottage Way, Room E-2841, Federal Office Building, Sacramento, Calfironia 95825, (916) 978-4815. At 10 a.m. on December 11, 1987, the segregative effect imposed by the Notice of Realty Action published in the **Federal Register** February 2, 1987, Vol. 52, p. 3175, for conveyance of the reserved mineral interest, will be lifted from the following described lands:

**Serial No.—CA 19668**

T. 17 S., R. 7 E., Mount Diablo Meridian,
Sec. 15, SE1/4;
Sec. 22, N1/2NE1/4, S1/2NW1/4, W1/2SW1/4, SE1/4SW1/4, SW1/4SE1/4.
County—San Diego
Mineral Reservation—100% oil and gas

**Serial No.—CA 19822**

T. 2 S., R. 13 W., San Bernardino Meridian,
Sec. 14, Lots 3, 4.

County—Los Angeles
Mineral Reservation—100% oil and gas
Dated: November 10, 1987.

Nancy J. Alex
*Chief, Lands Section Branch of Adjudication and Records.*

[FR Doc. 87-26527 Filed 11-17-87; 8:45 am]
BILLING CODE 4310-40-M

**[AZ-050-8-4212-13; CA-20669]**

## San Bernardino County, CA; Realty Action, Land Exchange With Private Party

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action; land exchange with private party, San Bernardino County, California.

**SUMMARY:** The following described lands and interests therein have been determined to be suitable for disposal for exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 8 N., R. 23 E., San Bernardino Meridian, California
Sec. 4, lot 4, SW¼NW¼, N½SW¼, SE¼SW¼, N½SW¼SW¼, SE¼SW¼SW¼, N½SW¼SW¼SW¼, SE¼SW¼SW¼SW¼, W½SW¼SE¼, containing 258 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from Quinto Polidori, an Arizona resident:

**San Bernardino Meridian, California**

T. 11 N., R. 17 E., sec. 2;
T. 12 N., R. 16 E., sec. 22;
T. 12 N., R. 17 E., secs. 4, 7, 8, 10, 18, and 19;
T. 13 N., R. 16 E., secs. 15 and 22; containing 1,640 acres, more or less.

The public land to be transferred and private land to be acquired will be subject to existing emcumbrances.

The value of the lands to be exchanged is approximately equal. The acreages will be adjusted or money will be used to equalize the values after the final appraisal is received.

Publication of this notice will segregate the subject lands from all approprations under the public land laws, including the mining laws, but not mineral leasing laws. This segregation will terminate upon the issuance of a document conveying such lands, 2 years from the date of publication, or upon publication of Notice of Termination.

**DATES:** For a period of up to and including January 4, 1988 interested parties may submit comments to the District Manager, Yuma District Office, P.O. Box 5680. Yuma, Arizona 85364. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

**FOR FURTHER INFORMATION CONTACT:** Mike Ford, Area Manager, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403.

Date: November 10, 1987.

Robert V. Abbey,
*Acting District Manager.*

[FR Doc. 87-26528 Filed 11-17-87; 8:45 am]
BILLING CODE 4310-32-M

## Fish and Wildlife Service

## Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-722670

Applicant: Jumbolair Inc., Ocala, FL

The applicant request a permit to import three pairs of captive-hatched gavials (Gavialis gangeticus) from the government of Nepal for the purpose of captive breeding.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: November 13, 1987.

R. K. Robinson,
*Chief, Branch of Permits, Federal Wildlife Permit Office.*

[FR Doc. 87-26585 Filed 11-17-87; 8:45 am]
BILLING CODE 4310-55-M

## Minerals Management Service

## Gulf of Mexico Outer Continental Shelf; Availability of Proposed Notice of Sale, Central Gulf of Mexico, Oil and Gas Lease Sale 113.

With regard to oil and gas leasing on the Outer Continental Shelf (OCS), the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for Sale 113, Central Gulf of Mexico, may be obtained by written request to the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, or by telephone (504) 736-2519.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening scheduled for March 1988.

This Notice of Availability is hereby published pursuant to 30 CFR 256.29, as amended (51 FR 37177 on October 20, 1986), as a matter of information to the public.

Dated: November 12, 1987.

Wm. D. Bettenberg,
*Director, Minerals Management Service.*

[FR Doc. 87-26485 Filed 11-17-87; 8:45 am]
BILLING CODE 4310-MR-M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337-TA-265]**

## Import Investigations; Certain Dental Prophylaxis Methods, Equipment and Components Thereof

**AGENCY:** International Trade Commission.

**ACTION:** Nonreview of an initial determination (ID) terminating five respondents on the basis of consent orders.

**SUMMARY:** The Commission has determined not to review an ID terminating respondents Peerless International, Inc., Kavo American Corp., Henry Schein, Inc., University Dental Supply Co., and Benco Dental Supply Co. from the above-captioned investigation on the basis of consent orders.

**FOR FURTHER INFORMATION CONTACT:** Laurie Horvitz, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 523-0143.

**SUPPLEMENTARY INFORMATION:** This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

Each of the five respondents filed a joint motion with complainants Dentsply Research and Development Corp. and

Dentsply International Inc. requesting termination of the investigation with respect to the respondent signing the joint motion. Each of the five joint motions is based upon a consent order agreement entered into between complainants and the signatory respondent and a proposed consent order. The Commission's investigative attorney filed a public interest statement in support of the motions.

On October 19, 1987, the presiding administrative law judge (ALJ) issued an ID (Order No. 16) granting the joint motions. No petitions for review or agency or public comments were received.

Termination of the investigation as to the five respondents on the basis of the consent orders furthers the public interest by conserving the resources of commission and of the parties involved.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. Interational Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: November 13, 1987.

**Kenneth R. Mason,**

*Secretary*

[FR Doc. 87–26628 Filed 11–17–87; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–276]**

## Import Investigations; Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories and Processes for Making Such Memories

**AGENCY:** International Trade Commission.

**ACTION:** Nonreview of an initial determination (ID) designating the investigation more complicated.

**SUMMARY:** Notice us hereby given that the Commission has determined not to review the administrative law judge's (ALJ) ID designating the above-captioned investigation more complicated, thereby extending the deadline for completion of the investigation by six months, i.e., from September 16, 1988, to March 16, 1989.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Buchenhorner, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–533–1626.

**SUPPLEMENTARY INFORMATION:** On September 29, 1987, respondents Hyundai Electronics America, Inc., Hyundai Electronics Industries Co., Ltd., Cypress Electronics, All American Semiconducter, Inc., and Pacesetter Electronics, Inc. moved to designate the investigation more complicated. Respondent International CMOS Technology, Inc. and the Commission investigative attorney supported the motion. Complainant Intel Corporation opposed the motion.

On October 8, 1987, the presiding ALJ issued an ID (Order No. 1) designating the investigation more complicated due to the validity, enforceability, and infringement issues in connection with eight complex patents. October 23, 1987, complainant Intel Corporation filed a petition for review of the ID. No comments from government agencies were received.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone 202–523–0161

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: November 9, 1987.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–26626 Filed 11–17–87; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 731–TA–371 (Final)]**

## Import Investigations; Fabric and Expanded Neoprene Laminate From Taiwan

### Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Taiwan of fabric and expanded neoprene laminate, provided for in items 355.81, 355.82, 359.50, and 359.60 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

### Background

The Commission instituted this investigation effective May 14, 1987, following a preliminary determination by the Department of Commerce that imports of fabric and expanded neoprene laminate from Taiwan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of the public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 10, 1987 (52 FR 22010). The hearing was held in Washington, DC, on October 6, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 12, 1987. The views of the Commission are contained in USITC Publication 2032 (November 1987), entitled "Fabric and Expanded Neoprene Laminate From Taiwan: Determination of the Commission in Investigation No. 731–TA–371 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: November 13, 1987.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–26627 Filed 11–17–87; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–260]**

## Import Investigations; Certain Feathered Fur Coats and Pelts, and Process for the Manufacture thereof

**AGENCY:** International Trade Commission.

**ACTION:** The U.S. International Trade Commission has determined not to review an initial determination (ID) finding a violation of section 337 in the above-captioned investigation. The Commission's determination is based on

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

its conclusion that complainants have met their burden of proof of establishing a violation of section 337. In this particular instance, there being a previous finding of fault under Commission rule 210.25 (19 CFR 210.25), that burden was to establish a prima facie case of violation under that rule. The parties to the investigation are requested to file written submissions on the issues of remedy, the public interest, and bonding.

**FOR FURTHER INFORMATION CONTACT:** Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0261.

**SUMMARY:** On September 24, 1987, the Adminstrative Law Judge (ALJ) issued an ID in this investigation, finding that there is a violation of section 337 in the importation and sale of certain feathered fur coats and pelts. No petitions for review were filed. No comments were received from government agencies.

**SUPPLEMENTARY INFORMATION:** Having found that a violation of section 337 has occurred, the Commission may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission concludes that some form of relief is appropriate, it must consider the effect of that relief upon the public health and welfare, competitive conditions in the U.S. economy, the U.S. production of articles which are like or directly competitive with those that are subject to investigation, and U.S. consumers. The Commission is therefore interested in receiving written submissions concerning the effect, if any that granting relief would have on the enumerated public interest factors.

If the Commission orders relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions: The parties to the investigations and interested government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Written submissions on the issues of remedy, the public interest, and bonding must be filed no later than the close of business on November 23, 1987. Reply submissions on these issues must be filed no later than the close of business on November 30, 1987. Persons other than the parties and government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Such submissions must be filed not later than the close of business on November 23, 1987. No further submissions will be permitted.

Commission Hearing. The Commission does not plan to hold a public hearing in connection with the final disposition of this investigation.

Additional Information: Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment by the ALJ. All such requests should be directed to the Secretary of the Commission and must include a statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential submissions will be available for public inspection at the Secretary's Office.

**Authority:** This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.54, 210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.54, 210.56).

Notice of this investigation was published in the **Federal Register** on December 29, 1986 (51 F.R. 46944).

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: November 10, 1987.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87-26629 Filed 11-17-87; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 337-TA-261]**

## Import Investigations; Certain Ink Jet Printers Employing Solid Ink

**AGENCY:** International Trade Commission.

**ACTION:** Nonreview of an initial determination (ID) deleting two complainants as parties to the investigation.

**SUMMARY:** Notice is hereby given that the Commission has determined not to review the ID (Order 16) of the presiding administrative law judge (ALJ) amending the complaint and notice of investigation in the above-captioned investigation by deleting Imaging Solutions, Inc. (Imaging Solutions) and E/D Venture as party complainants.

**FOR FURTHER INFORMATION CONTACT:** Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-1693.

**SUPPLEMENTARY INFORMATION:** On October 2, 1987, complainant Dataproducts Corporation (Dataproducts) moved to amend the complaint and notice of investigation by deleting Imaging Solutions and E/D Venture as party complainants to the investigation. As of June 27, 1987, Dataproducts had acquired all the assets of Imaging Solutions. Although Imaging Solutions still exists as a corporate entity, it no longer has any interest in the investigation. E/D Venture was a partnership set up by the remaining co-complainants, Dataproducts and Reliance Printing Systems, Inc., to finance the manufacture of ink jet printers. As a result of Dataproducts' purchase, E/D Venture ceased to exist. The ALJ issued an ID granting Dataproducts' motion on October 15, 1987. The Commission did not receive any petitions for review of the ID or comments from other Government agencies.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in

the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: November 10, 1987.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–26630 Filed 11–17–87; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–261]**

## Import Investigations; Certain Ink Jet Printers Employing Solid Ink; Change of the Commission Investigative Attorney

Before Sidney A. Harris, Administrative Law Judge.

Notice is hereby given that, as of this date, Marcia H. Sundeen, Esq., of the Office of Unfair Import Investigations, 701 E Street, N.W., Washington, D.C. 20436, will be the Commission Investigative Attorney in the above-cited investigation instead of Stephen L. Sulzer, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: November 12, 1987.

**Arthur Wineburg,**

*Director, Office of Unfair Import Investigations.*

[FR Doc. 87–26631 Filed 11–17–87; 8:45 am]

BILLING CODE 7020–01–M

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**[Investigation No. 337–TA–237]**

## Import Investigations; Certain Miniature Hacksaws

**AGENCY:** International Trade Commission.

**ACTION:** Institution of advisory opinion proceedings.

**SUMMARY:** The Commission has granted the petition of the Disston Company, Inc. (Disston) for an advisory opinion with respect whether a miniature hacksaw it has developed is covered by Commission exclusion orders issued at the conclusion of the above-captioned investigation. The Commission has certified the petition to the Chief Administrative Law Judge, or such Commission administrative law judge (ALJ) as she shall designate, for appropriate adversary proceedings, and has directed the issuance of an initial advisory opinion (IAO) as to whether Disston's miniature hacksaw is covered by any of claims 1–9 of U.S. Letters Patent 3,756,298.

**FOR FURTHER INFORMATION CONTACT:** N. Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0311.

**SUPPLEMENTARY INFORMATION:** This action is taken under authority of section 337 of the Tariff Act of 1980 (19 U.S.C. 1337) and Commission rule 211.54(b) (19 CFR 211.54(b)).

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E. Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: November 10, 1987.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–26632 Filed 11–17–87; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–267]**

## Import Investigation; Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment

**AGENCY:** International Trade Commission.

**ACTION:** Commission decision to affirm an initial determination.

**SUMMARY:** Notice is hereby given that the Commission has determined to affirm the initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation terminating the investigation as to respond "Hair-Gro."

**FOR FURTHER INFORMATION CONTACT:** Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–3395.

**SUPPLEMENTARY INFORMATION:** On August 6, 1987, the ALJ issued an ID (Order No. 8) which terminated the investigation with respect to respondent "Hair-Gro." Complainant The Upjohn Co. filed a petition for review of the ID. No comments were received from government agencies. On September 8, 1987, the Commission determined to review the ID.

This action is taken under authority of section 337 of the Tariff Act of 1930 and §§ 210.53–210.56 of the Commission's Rules of Practice and Procedure (19 U.S.C. 1337; 19 CFR 210.53–210.56).

Copies of the ID and all other all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: November 12, 1987.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–26633 Filed 11–17–87; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–267]**

## Import Investigations; Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the bais of a settlement agreement: Mastey Distributors, Inc.

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 9, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that

information on this matter can be obtained by contacting the Commisson's TDD terminal on 202-724-0002.

*Written Comments:* Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commisison in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: November 9, 1987.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87-26634 Filed 11-17-87; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 337-TA-267]**

## Import Investigations; Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment

**AGENCY:** International Trade Commission.

**ACTION:** Termination of respondent Tulsa Intertrade on the basis of a settlement agreement.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) terminating respondent Tulsa Intertrade in the above captioned investigation on the basis of a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 523-3395.

**SUPPLEMENTARY INFORMATION:** On October 9, 1987 the presiding administrative law judge issued an ID (Order No. 23) granting the joint motion of complainant The Upjohn Company and respondent Tulsa Intertrade to terminate the investigation with respect to Tulsa Intertrade on the basis of a settlement agreement. No petitions for review of the ID and no government agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commisison, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: November 6, 1987.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87-26635 Filed 11-17-87; 8:45 am]

BILLING CODE 7070-02-M

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**[Investigation No. 337-TA-275]**

## Import Investigations; Certain Nonwoven Gas Filter Elements

**AGENCY:** International Trade Commission.

**ACTION:** Nonreview of an initial determination amending the complaint and notice of investigation. Notice is hereby given that the Commission has determined not to review an initial determination amending the complaint and notice of investigation to add an allegation of infringement of claim 6 of U.S. Letters Patent 4,056,375.

**FOR FURTHER INFORMATION CONTACT:** P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

**SUPPLEMENTARY INFORMATION:** The subject investigation is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain nonwoven gas filter elements that allegedly infringe claims 1, 2, 3, 4, 7, 8, or 9 of U.S. Letters Patent 4,056,375 (the '375 patent). See 52 FR 32182 (August 26, 1987). On October 2, 1987, on the basis of information obtained in pretrial discovery, complainant Freudenberg Nonwovens Limited Partnership moved to amend the complaint and notice of investigation to add claim 6 of the '375 patent to the infringement allegations. See Motion No. 275-2. The motion was unopposed. On October 14, 1987, the presiding administrative law judge issued an initial determination (ID) granting the motion. See Order No. 10.

The Commission received no petitions for review of the ID or comments from other government agencies. After finding that (1) there was good cause for amending the complaint and notice of investigation to add claim 6 to the infringement allegations, and (2) expanding the scope of the investigation in that manner would not prejudice the public interest or the rights of the parties, the Commission decided not to review the ID. By virtue of that decision, the ID became the determination of the Commission. *See* 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471.

Hearing-impaired individuals are advised that information concerning this investigation can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: November 9, 1987.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87-26636 Filed 11-17-87; 8:45 am]

BILLING CODE 7020-02

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**[Investigation No. 337-TA-263]**

## Import Investigations; Certain Office Filing Cabinets

**AGENCY:** International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Tukaway Computer Cabinets Inc. (Tukaway), Desks, Inc. (Desks) and Compania Internacional de Muebles de Acero (CIMA).

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the

Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 9, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

*Written Comments:* Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: November 9, 1987.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–26637 Filed 11–17–87; 8:45 am]

BILLING CODE 7020–02–M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to Clean Water Act; Victor Harling

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 27, 1987, a proposed consent decree in *United States v. Victor Harling,* Civil Action No. A86–146, was lodged with the United States District Court for the District of Alaska. The complaint filed by the United States alleged violations of the Clean Water Act by defendant due to discharges of pollutants from defendant's placer gold mine. The consent decree provides for payment of a civil penalty in the amount of $4,000 and for injunctive relief to prevent defendant from operating a placer mine that discharges pollutants into waters of the United States unless the mine is in compliance with a valid NPDES permit and the compliance plan contained in the consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Victor Harling,* D.J. Ref. No. 90–5–1–1–2597. The proposed consent decree may be examined at the office of the United States Attorney, Federal Building and U.S. Courthouse, 701 C Street, Room C–252, Anchorage, Alaska 99513, and at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87–26527 Filed 11–17–87; 8:45 am]

BILLING CODE 4410–01–M

### Lodging of Consent Decree Pursuant to the Clean Air Act; Indianapolis, IN

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that on October 16, 1987 a proposed consent decree in *United States v. City of Indianapolis, Indiana,* Civil Action No. IP–86–480C was lodged with the United States District Court for the Southern District of Indiana. The proposed consent decree concerns control of air pollution at the city's sludge incinerators. The proposed consent decree requires the defendant to install upgraded pollution control equipment and pay a civil penalty of $75,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Indianapolis, Indiana,* D.J. Ref. 90–5–2–1–924.

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of Indiana, 274 United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204, and at the Region 5 Office of the Environmental Protection Agency, Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 percents per page reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87–26528 Filed 11–17–87; 8:45 am]

BILLING CODE 4410–01–M

### Consent Decree in Action to Enjoin Violation of the Clean Air Act; Monroe, NY

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 190209, notice is hereby given that a consent decree in *United States of America v. County of Monroe, New York* (W.D.N.Y.) was lodged with the United States District Court for the Western District of New York on *October 30, 1987.* This decree imposes a compliance plan for the Iola Powerhouse, a facility owned and operated by the County of Monroe, to bring that facility into compliance with the Clean Air Act (CAA), 42 U.S.C. 4701 *et seq.,* and the applicable New York State Implementation Plan (SIP), Part 227.

The Department of Justice will receive for thirty days from date of publication of this notice, written comments relating

to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America v. County of Monroe, New York,* D.J. No. 90-5-2-252.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of New York, 502 United States' Courthouse, Court and Franklin Streets, Buffalo, New York 14202; at the Regional II Office of the Environmental Protection Agency, Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.00 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87-26524 Filed 11-17-87; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree Pursuant to Clean Water Act; Promised Land Mining

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 23, 1987, a proposed consent decree in *United States v. Promised Land Mining,* Civil Action No. A86-005, was lodged with the United States District Court for the District of Alaska. The complaint filed by the United States alleged violations of the Clean Water Act by defendants due to discharges of pollutants from defendants' placer gold mine. The consent decree provides for payment of a civil penalty in the amount of $8,000 and for injunctive relief to prevent defendants from operating a placer mine that discharges pollutants into waters of the United States, unless the mine is in compliance with a valid NPDES permit and the compliance plan contained in the consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Promised Land Mining,* D.J. Ref. No. 90-5-1-1-2573. The proposed consent decree may be examined at the office of the United States Attorney, Federal Building and U.S. Courthouse, 701 C Street, Room C-252, Anchorage, Alaska 99513, and at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87-26525 Filed 11-17-87; 8:45 am]

BILLING CODE 4410-01-M

## Office of Juvenile Justice and Delinquency Prevention

### Coordinating Council; Meeting

The fourth quarterly meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held in Washington, DC, on December 15, 1987. The meeting will take place in the Main Auditorium of the Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW., from 9:30 a.m. to 12:00 p.m. The public is welcome to attend. The agenda will focus on issues related to child exploitation.

For further information, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724-7655.

Date: November 10, 1987.

**Verne L. Speirs,**

*Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 87-26536 Filed 11-17-87; 8:45 am]

BILLING CODE 4410-18-M

### Advisory Board on Missing Children; Meeting

The Attorney General's Advisory Board on Missing Children will convene to conduct a business meeting on December 11, 1987. The meeting will be held at The Vista International Hotel, 1400 M Street, NW., Washington, DC, in the Westover Room, beginning at 9:00 a.m.

For further information, please contact Deborah Morris, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724-7655.

Date: November 12, 1987.

**Verne L. Speirs,**

*Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 87-26577 Filed 11-17-87; 8:45 am]

BILLING CODE 4410-18-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 87-94]**

### NASA Advisory Council (NAC), Space Applications Advisory Committee (SAAC) Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee, Informal Advisory Subcommittee on Microgravity Science and Applications.

**DATE AND TIME:** December 1, 1987, 8:30 a.m.-4:30 p.m.

**ADDRESS:** Holiday Inn-Capitol, Gemini Room, 550 C Street, SW., Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1656).

**SUPPLEMENTARY INFORMATION:** The Informal Advisory Subcommittee on Microgravity Science and Applications will meet to confirm the approach and schedule for a long-range strategic planning study for NASA's Microgravity Science and Applications Division. The Committee is chaired by Dr. Simon Ostrach and is composed of 7 members. The meeting will be open to the public up to the seating capacity of the room (approximately 15).

Type of meeting: Open.

Agenda:

December 1, 1987.

8:30 a.m.—Introduction and Overview of agenda.

9 a.m.—Overview of planning activity schedule.

9:30 a.m.—Discuss rationale for developing long-range strategic plan.

10:30 a.m.—Overview of Current Reports on Microgravity Science.

11 a.m.—Review of Discipline Working Group report and goals.

1 p.m.—Discuss and reach agreement on purpose and scope of the study as well as the strategic plan.

1:30 p.m.—Review and confirm assumptions for strategic plan.

2 p.m.—Review and reach agreement on the agenda for the 5-day study.

3 p.m.—Identify and select invited participants.

4 p.m.—Identify next steps.

4:30 p.m.—Adjourn.

November 9, 1987.

**Ann Bradley,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 87-26498 Filed 11-17-87; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability

**AGENCY:** National Archives and Records Administration, Office of Records Administration.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

**DATE:** Requests for copies must be received in writing on or before December 18, 1987. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

**ADDRESS:** Address requests for single copies of schedules identified in the notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

### Schedules Pending

1. Department of the Air Force, Office of Special Investigations (N1-AFU-87-21). Investigative support records regarding the threatened airman program and criminal alert notices.

2. Department of the Air Force (N1-AFU-87-32). Facilitative records relating to museum programs.

3. Department of the Air Force (N1-AFU-88-2). Civilian personnel position descriptions.

4. Department of the Air Force (N1-AFU-88-4). Short term personnel records relating to promotions.

5. Department of the Air Force (N1-AFU-88-6). Individual weight management and fitness training records.

6. Department of Commerce, International Trade Administration (N1-151-87-8). Records relating to Technical Advisory Committees.

7. Department of Housing and Urban Development (N1-207-87-3). Financial and other records relating to the New Communities Development Corporation.

8. Department of Justice, Civil Division, Foreign Litigation Section (N1-131-87-2). Intercustodial bank files, vested asset report case files, and general correspondence of the defunct Office of Alien Property.

9. Department of Justice, Immigration and Naturalization Service (N1-85-88-1). Petitions on behalf of alien relatives and prospective employees and related index cards.

10. Department of State, Bureau of Administration (N1-59-87-16). Facilitative records relating to a study on resource management.

11. Department of the Treasury, Comptroller of the Currency (N1-101-87-4). Records relating to the assets of failed banks.

12. Department of the Treasury, Internal Revenue Service (N1-58-87-7). Comprehensive schedule for the records of the offices under the Assistant Commissioner (Inspection).

13. General Services Administration, Federal Property Resources Administration (N1-291-87-1). Reports, correspondence, and drill hole logs relating to the Nicaro Project, 1949-60.

14. U.S. Information Agency, Office of the General Counsel and Congressional Liaison (N1-306-87-7). Facilitative records and routine legal cases (related policy records and precedential cases will be scheduled for transfer to the National Archives).

Dated: November 10, 1987.

**Frank G. Burke,**

*Acting Archivist of the United States.*

[FR Doc. 87-26523 Filed 11-17-87; 8:45 am]

BILLING CODE 7515-01-M

## NATIONAL CAPITAL PLANNING COMMISSION

### Guidelines and Submission Requirements for the Installation of Satellite Antennas on Federal Property in the National Capital Region

**AGENCY:** National Capital Planning Commission.

**ACTION:** Proposed guidelines and submission requirements.

**SUMMARY:** On October 5, 1987, the National Capital Planning Commission (NCPC) approved the circulation for comments of the following Proposed Guidelines and Submission Requirements for the installation of satellite antennas on Federal property in the National Capital Region. These regulations have been developed to decrease the potential adverse aesthetic impact of satellite antennas in the National Capital Region and to protect the population from potential health hazards.

**DATE:** Comments must be received by December 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Martin J. Rody, Director, Planning Services Division, National Capital Planning Commission, 1325 G Street, NW., Washington, DC 20576 or by telephone at 202/724-0179.

**Robert E. Gresham,**

*Acting Executive Director.*

November 13, 1987.

The National Capital Planning Commission finds that certain satellite antennas may adversely impact the aesthetics of the National Capital Region and the health and welfare of its population. Therefore, in order to minimize the visual impacts of satellite antennas on the skyline of the Nation's Capital and on the general appearance of Federal facilities and to protect the public from any potential adverse radio frequency bio-effect impacts from transmitting microwave antennas, the National Capital Planning Commission is providing the following Guidelines and Submission Requirements to be used by Federal agencies in the National Capital Region in the preparation and submission of plans for antenna installations. (The National Capital Region includes Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudon, Prince William Counties, and the independent cities within the outer boundaries thereof in Virginia; and the District of Columbia).

(a) Prior to the installation of any satellite antenna on Federal property in the National Capital Region, Federal agencies shall submit (pursuant to section 5 of the National Capital Planning Act of 1952, as amended; section 5-432, D.C. Code, in the District of Columbia; and as appropriate, section 4 of the International Center Act of 1968, as amended) all such installation proposals to the National Capital Planning Commission for review and comment. Approval by the NCPC of such installations will be limited to five years. This time period may be increased to 10 years at the NCPC's discretion on sites outside the Monumental Core [1] and surrounding lands and designated Historic Districts.

(1). Specific Submission Requirements:

(i) A statement of need—justifying the size of the antenna and other appropriate data regarding the particular installation consistent with security limitations.

(ii) Site plan and building elevations (for antennas mounted on a building) showing the form, dimensions, and location of the antenna(s).

(iii) Construction drawings showing the proposed method of installation.

(iv) Description of the texture and color of materials to be used.

(v) Screening plan—including proposed materials, color and texture for rooftop installations. For ground-level installations also include the number, species, and size of trees or shrubs to be used as a screen.

(vi) Site line studies illustrating the extent to which the proposed antenna(s) will be visible from the surrounding streets and public open spaces. These studies should include all alternatives considered.

(vii) A review of alternatives considered to meet the telecommunication needs of the agency.

(2) General Criteria Applying to Antenna Installations:

(i) No rooftop satellite antenna in the National Capital Region should exced the height of the roof of any permitted penthouses on Federal buildings.

(ii) Materials used in the construction of antennas and their mountings should not be bright, shiny, or reflective and should be of a color that blends with the surrounding building materials.

(iii) Any masts or towers should be non-combustible, corrosion resistant, and protected against electrolytic action.

(iv) All antennas should be adequately grounded to protect against a direct lightning strike.

(b) Federal agencies may request an extension of the approval prior to expiration of the original approval. The request should be accompanied by a certification that:

(1) The original installation is structurally sound and continues to meet all the submission requirements;

(2) Clearly establishes the continued need for the installation; and

(3) Technological advances have not offered any alternatives that permit the elimination of the antenna or reduction in its size to minimize the visual impacts.

Any antenna installation which does not receive re-certification by the NCPC should be dismantled and removed as soon as possible after the expiration of the NCPC's approval period.

(c) To the extent possible, Federal agencies should anticipate the need for antennas on all new buildings and design such buildings in such a fashion as to screen the needed antennas in a manner appropriate to the design of each building.

(d) Rooftop antennas on existing Federal buildings or ground level installations in the National Capital Region should be designed and installed in a manner that minimizes or eliminates their visual impacts on adjacent properties or public rights-of-way. Where appropriate to the character of a building, retro-fitting to screen antennas not accommodated in original building designs and plans should be considered. Various architectural solutions are possible for retro-fitting buildings to screen antenna installations. The architectural style, orientation, available rooftop space, and structural character of a building, as well as the heights of neighboring buildings, are all important considerations in the retrofit option selected. A variety of materials, including plastic, fiberglass, and glass can be used to screen or obscure antennas. Any materials that do not block the passage of the radio frequency signals are suitable as a screen.

(e) Reasonable precautions are necessary in locating and operating transmitting microwave antennas, because of potential adverse radio frequency bio-effects. In light of the numerous variables regarding power and frequency levels for each installation, electromagnetic radiation impacts will have to be evaluated on a site specific basis. All submissions to the NCPC for a transmitting microwave antenna should be accompanied by an environmental assessment. The environmental assessment shall include, among other considerations, an estimate of the electromagnetic radiation levels at 10, 50, 100, 500, 1,000 and 2,000 feet from the installation in milliwatts/centimeter squared and the safeguards proposed to protect the public from any potential adverse bio-effects. A manufacturers certification as to electromagnetic radiation at the above distances and a statement that the proposed antenna meets all American National Standards Institute (ANSI) and Environmental Protection Agency (EPA) current radio frequency emission

[1] The Monumental Core as defined in the Federal Facilities element of the "Comprehensive Plan for the National Capital."

standards should be made part of the environmental assessment. The NCPC will continue to seek state-of-the-art information on health and human safety issues and shall apply that information and resulting awareness of issues in reviewing and approving antenna installations.

(f) All agencies responsible for antenna installations existing at the time of the adoption of these guidelines are required to apply for approval of all such installations within five years after the adoption of these Guidelines and Submission Requirements.

(g) These guidelines are general in nature and convey the spirit of the concerns regarding potential adverse visual and/or bio-effect impacts to be mitigated. Each installation is a special case and the appropriateness of the solutions selected to reduce the visual impacts will, in a large measure, be determined by the particular location or locations chosen for the installation and the architectural character of the building. These guidelines provide general criteria to be applied on a case-by-case basis.

(h) The NCPC will, in its review of proposals for satellite antenna installations, be particularly concerned with the agency's statement of need, justification of antenna size, and measures employed to minimize the visual impacts of the proposed installation. The NCPC will continue to review all satellite and terrestrial microwave antenna proposals, on a case-by-case basis, as a modification to previously approved site and building plans.

[FR Doc. 87-26624 Filed 11-17-87; 8:45 am]
BILLING CODE 7520-02-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Literature Advisory Panel; Meeting

Pursuant to section 101(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the literature Advisory Panel (Literary Publishing Section) to the National Council on the Arts will be held on December 3-4, 1987, from 9:00 a.m.-6:00 p.m., and on December 5, 1987, from 9:00 a.m.-2:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 5, 1987 from 12:30-2:00 p.m. The topics for discussion will be guidelines review and policy issues.

The remaining sessions of this meeting on December 3-4, 1987, from 9:00 a.m.-6:00 p.m. and on December 5, 1987, from 9:00 a.m.-12:30 p.m. are for the purpose of review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1956, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

**Yvonne M. Sabin,**

*Acting Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 87-26566 Filed 11-17-87; 8:45 am]
BILLNG CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50-416]**

### Mississippi Power and Light Co., System Energy Resources, Inc., and South Mississippi Electric Power Assn.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 20, Appendix A, footnote d-2(c) to Mississippi Power and Light Company, et al. (the licensee), for the Grand Gulf Nuclear Station, Unit No. 1, (the facility) located in Claiborne County, Mississippi.

**Environmental Assessment**

*Identification of Proposed Action*

Footnote d-2(c) of Appendix A to 10 CFR Part 20 states, "No allowance is to be made for use of sorbents against radioactive gases or vapor." The proposed exemption would allow the use of a radioiodine protection factor of 50 when using the mine safety appliances (MSA) GMR-1 canisters at the facility. The proposed exemption is in response to the licensee's application dated June 29, 1987, as supplemented August 21, 1987.

*The Need for the Proposed Action*

The proposed exemption is needed to facilitate certain operations at the facility in areas where airborne radioiodine levels necessitate respiratory protection for workers. The requested exemption would allow utilization of air-purifying respirators in lieu of supplied-air or self-contained apparatuses. A supplied-air respirator can limit a worker's efficiency because the worker is restricted to the area within the reach of his air-supply hose. A self-contained breathing apparatus is usually very heavy and cumbersome, and has a limited air supply. Therefore, a person using this type of apparatus is less mobile and less efficient in performing his duties. Air-purifying respirators, on the other hand, are lightweight, and their use would reduce the worker's physical work effort and time spent in the work area, and thereby result in less personnel radiation exposure.

*Environmental Impact of the Proposed Action*

The proposed exemption involves a change in the installation or use of the facility's components located entirely within the restricted area as defined in 10 CFR Part 20. The staff has determined that the proposed exemption will result in a small increase in the amount of low-level solid waste due to the disposal of used sorbent canisters. However, the proposed exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite. Because the use of air-purifying respirators will allow the plant workers to perform their jobs more efficiently than could be done using supplied-air or self-contained apparatuses, this exemption will most likely reduce the individual or cumulative occupational radiation exposures at the Grand Gulf Nuclear Station by decreasing worker time spent in radiation areas. The exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant environmental impacts associated with the proposed exemption.

*Alternative to the Proposed Action*

Since we have concluded there are no significant environmental impacts for the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. Such an action would not reduce environmental impacts of plant operation.

*Alternative Use of Resources*

This action involves no use of resources not previously considered in the Final Environmental Statement for the Grand Gulf Nuclear Station, Unit 1, dated September 1981.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult with any other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated June 29, 1987, as supplemented August 21, 1987, which are available for public inspection at the Commission's public Document Room 1717 H Street, NW., Washington, DC, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Bethesda, Maryland, this 10th day of November, 1987.

For the Nuclear Regulatory Commission.

**Herbert N. Berkow,**

*Director, Project Directorate II-2, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 87-26583 Filed 11-17-87; 8:45 am]

BILLING CODE 7590-01-M

## Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published October 19, 1987 (52 FR 38824). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the December 1987 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634-3265, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

**ACRS Subcommittee Meetings**

*Decay Heat Removal Systems,* November 17, 1987, Washington, DC. The Subcommittee will discuss: (1) The decision by Toledo Edison not to install a dedicated blowdown system at Davis Besse; (2) implications of secondary side water level control in B&W OTSGs vis-a-vis operator actions in accident situations; and (3) implications of the Diablo Canyon loss of shutdown cooling event vis-a-via lack of steam generator water box vents.

*Thermal-Hydraulic Phenomena,* November 18 and 19, 1987, Washington, DC. The Subcommittee will review key elements of NRC RES's 5-year Thermal-Hydraulic Research Program for input to the ACRS report on thermal-hydraulic research to the Congress and the Commission. The Subcommittee will also discuss the status of NRC's action on a potentially unanalyzed LB LOCA scenario.

*Quality and Quality Assurance in Design and Construction,* November 24, 1987, Washington, DC. The Subcommittee will review QA Experience in Readiness Reviews as applied to nuclear power plants, with a view toward possible application to HLW geologic repositories and monitored retrievable storage (MRS) facilities.

*Safety Philosophy, Technology, and Criteria,* December 2, 1987, Washington, DC. The Subcommittee will discuss the Staff's proposed implementation plan for the Safety Goal Policy Statement (½ day) and the Staff's proposed final resolution for USI A-17 (Systems Interaction).

*Joint Metal Components and Thermal Hydraulic Phenomena,* December 15, 1987, Washington, DC. The Subcommittees will review: (1) The North Anna steam generator tube failure, and (2) R.L. Johnson's comments on proposed revision to acceptance criteria for the ECCS rule with respect to steam generator tube integrity.

*Generic Items,* December 16, 1987, Washington, DC (12:00 Noon). The Subcommittee will discuss with selected licensees the contribution to plant safety resulting from the implementation of resolved generic issues and USIs.

*Babcock & Wilcox Reactor Plants,* January 5, 1988, Washington, DC. The Subcommittee will continue its review of the long-term safety review of B&W reactors. This effort was begun during the summer of 1986; initial Committee comments offered on July 16, 1986 in a letter to V. Stello, EDO.

*Structural Engineering,* January 20, 1988, Albuquerque, NM. The Subcommittee will review the results of the model concrete containment test.

*Thermal-Hydraulic Phenomena,* January 21 and 22, 1988, Los Alamos, NM. The Subcommittee will review: (1) The documentation developed by LANL and INEL to support the TRAC PF1 and RELAP-5 Thermal-Hydraulic Codes pursuant to the RES CSAU requirements, and (2) the Final ECCS Rule version (tentative).

*Waste Management,* January 21 and 22, 1988, Washington, DC. The Subcommittee will review various pertinent waste management topics to be determined during an agenda planning session with NMSS and RES Staffs on November 23, 1987.

*Occupational and Environmental Protection System,* January 28, 1988, Washington, DC. The Subcommittee will review: (1) The "hot particle" problem, (2) the new revision to the definition of an "extraordinary nuclear occurrence", (3) monitoring the quality and quantity of airborne radionuclides in/out of containment following an accident, (4) the emergency planning rule, and (5) the control room habitability report by ANL.

*Joint Scram Systems Reliability and Core Performance,* January 29, 1988, Washington, DC. The Subcommittees will review the current status of LWR plant operations (core reload designs, etc.) as they impact on core reactivity control operational limits (e.g., moderator temperature coefficients) in general, and ATWS analyses in particular.

*Reliability Assurance,* February 9, 1988, Washington, DC. The Subcommittee will be briefed on the current status of equipment qualification research. Other items of interest include testing performed on Containment

Isolation valves and a test plan for the isolation of high energy line breaks.

*Advanced Reactor Designs,* Date to be determined (December), Washington, DC. The Subcommittee will review and comment on the draft Commission paper that will be prepared by the NRC Staff regarding the severe accidents and containment issues for the DOE-sponsored advanced reactor designs.

*Waste Management,* Date to be determined (December), Washington, DC. The Subcommittee will review the final draft of the Q-List GTP (which will include DOE's latest comments) prior to its scheduled publication in early December 1987.

*Westinghouse Reactor Plants,* Date to be determined (December/January), Washington, DC. The Subcommittee will discuss and hear presentations from Westinghouse representatives regarding the important design features and objectives of WAPWR (RESAR SP/90) and the AP 600 designs.

*Metal Components,* Date to be determined (January), Charlotte, NC. The Subcommittee will review the status of the NDE of cast stainless steel piping and other topics related to Subcommittee activities.

*Auxiliary Systems,* Date to be determined (January) (tentative), Washington, DC. The subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water System design, and (3) criteria being used by the NRC Staff to review the Chilled Water System design. To facilitate this discussion, some members of the Subcommittee will tour the Shearon Harris plant to look at the Chilled Water System design at that plant.

*Decay Heat Removal Systems,* Date to be determined (January), Washington, DC. The Subcommittee will continue its review of the NRC Staff Resolution Position for USI A-45.

*Severe Accidents,* Date to be determined (January/February) (tentative), Washington, DC. The Subcommittee will review the final version of the NRC Staff's proposed generic letter on Individual Plant Examinations (IPEs).

*Diablo Canyon,* Date to be determined (January/February), Location to be determined. The Subcommittee will review the status of the Diablo Canyon Long-Term Seismic Program.

*Auxiliary Systems,* Date to be determined (February), Washington, DC. The Subcommittee will discuss the final report on the Fire Risk Scoping Study being performed by Sandia National Laboratories for the NRC.

*Containment Requirements,* Date to be determined (February/March), Washington, DC. The Subcommittee will review the hydrogen control measures for BWRs and Ice Condenser PWRs (USI A-48). Discussions may include Emergency Planning Guidelines for BWRs.

*Containment Requirements,* Date to be determined (April), Washington, DC. The Subcommittee will review the NRC Staff's document on containment performance and improvements (all containment types).

*Decay Heat Removal Systems,* Date to be determined (April/May), Washington, DC. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

**ACRS Full Committee Meeting**

December 3-5, 1987: Items are *tentatively* scheduled.

*A. *Standardized Nuclear Plants (Open)*—Briefing respresentatives of the Electric Power Research Institute proposed EPRI Requirements for Advanced Light Water Reactors.

*B. *Nuclear Industry Activities (Open)*—Briefing by representatives of the nuclear power industry regarding reorganization and realignment of functions among industry groups to achieve operational excellence by all utilities, an improved interface with NRC, and effective resolution of all unresolved generic issues.

*C. *ACRS Activities (Open)*—Discuss proposed scope and nature of ACRS activities and practices for conduct of ACRS business.

*D. *Integrated Safety Assessment Program (Open)*—Discuss proposed NRC Staff resolution of ACRS comments in its report of July 15, 1987.

*E. *NRC Reactor Research Program (Open)*—Meeting with the Director, NRC Office of Research to discuss items of mutual interest.

*F. *Control Room Habitability (Open)*—Review of proposed NRC Task Action Plan for resolution of this generic issue and related ANL report. Representatives of the NRC Staff will participate as appropriate.

*G. *Seismic Qualification of Equipment (Open)*—Briefing by respresentatives of NRC Staff and discussion regarding the proposed final Regulatory Guide 1.100, Revision 2, on Seismic Qualification of Electrical and Mechanical Equipment for Nuclear Power Plants.

*H. *Operating Experience (Open)*—Briefing by representatives of NRC Staff and discussion of recent nuclear power plant operating events and incidents.

*I. *Human Factors (Open)*—ACRS review and comments regarding proposed NRC policy paper regarding Operator License Fundamentals Examination. Representatives of the NRC Staff will participate as appropriate.

*J. *NRC Quantitative Safety Goals (Open)*—Review and comment regarding proposed implementation plan for NRC Quantitative Safety Goals.

*K. *Containment Performance (Open)*—Briefing regarding proposed NRC action plan for the resolution of containment issues such as the Mark I containment capability to withstand severe accidents.

L. *ACRS Officers for CY-1988 (Closed)*—Discuss qualifications of nominees proposed as ACRS Officers for CY-1988.

M. *Appointment of New Members (Closed)*—Discuss qualifications of candidates proposed for appointment to the ACRS.

*N. *Future Activities (Open)*—Discuss anticipated ACRS subcommittee activity and items proposed for consideration by the full Committee.

*O. *Preparation of ACRS Reports (Open/Closed)*—Discuss proposed ACRS reports regarding Items considered during this meeting plus reports on the NRC Nuclear Waste Research Program; TVA Management Reorganization and proposed restart of TVA nuclear power plants; proposed resolution for USI A-47, Safety Implications of Control Systems; nuclear power plant instrument air systems; and the Integrated Safety Assessment Program.

*P. *ACRS Subcommittee Activities (Open)*—Reports and discussion of ACRS subcommittee activities including decay heat removal from nuclear power plants, and thermal-hydraulic phenomena.

January 7-9, 1988—Agenda to be announced.

February 11-13, 1988—Agenda to be announced.

Dated: November 12, 1987.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 87-26496 Filed 11-17-87; 8:45 am]

BILLING CODE 7590-01-M

## Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised

section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 26, 1987 through November 6, 1987. The last biweekly notice was published on November 4, 1987 (52 FR 42357).

## NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 18, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so

inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

**Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts**

*Date of application for amendment:* October 27, 1987.

*Description of amendment request:* The licensee is proposing an administrative change to the Pilgrim Technical Specifications to reflect corporate and site organizational changes previously implemented and reported to the NRC.

The position title of Radiation Protection Manager has been eliminated. The requirement for staffing an individual meeting or exceeding the qualifications of Regulatory Guide 1.8, September, 1975, is fulfilled by the Radiological Section Manager or the Chief Radiological Engineer.

Boston Edison has restructured and revitalized the Nuclear Organization based upon two fundamental principles: (1) identify the Organization's existing strengths and then augment these strengths with an infusion of qualified managerial and technical personnel with prior nuclear power experience; and (2) establish an organizational and reporting structure based upon functional responsibilities that utilizes these enhanced capabilities not only to facilitate the development and implementation of the restart effort, but also to strengthen the basic line organization to support ongoing operations.

*Basis for proposed no significant hazards consideration determination:* This reflects BECo actions to improve their management structure. It does not physically affect plant related systems. Therefore, this change would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Based on this finding, the staff has made an initial determination that the proposed amendment does not involve significant hazards considerations.

*Local Public Document Room location:* Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

*Attorney for licensee:* W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

*NRC Project Director:* Morton B. Fairtile, Acting Director.

**Dairyland Power Cooperative, Docket No. 50-409, LaCrosse Boiling Water Reactor, LaCrosse, Wisconsin**

*Date of amendment request:* September 30, 1987

*Description of amendment request:* The licensee proposes that License No. DPR-45 for the permanently shutdown and defueled LaCrosse Boiling Water Reactor (LACBWR) be amended to revise the Technical Specifications (TS) to eliminate some requirements that do not or should not now apply and to add some new requirements.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation and/or maintenance of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee evaluated the proposed changes in accordance with the standards of 10 CFR 50.92(c) and determined that the proposed amendment would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. The majority of changes and deletions are of items that are no longer applicable. These changes and deletions cannot affect the probability or consequences of any type of accident. Other changes which make previous operational requirements applicable under the existing shutdown conditions are more conservative and cannot increase the probability or consequence of any type of accident.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated. Since this proposed amendment consists of deletion of redundant information or requirements that don't or shouldn't apply, or involves the addition of new requirements it doesn't affect the probability of any kind of accident. No new mode of operation is created by any of the changes in this package, and so the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

(3) involve a significant reduction in a margin safety. Since the revisions proposed by this amendment consist of deleting requirements that don't apply or are not necessary for a plant that has been permanently shutdown and defueled, or consist of additional TS requirements the margin of safety is not being reduced.

Based on the above, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601.

*Attorney for licensee:* Kevin Gallen, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

*NRC Project Director:* Lester S. Rubenstein.

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia**

*Date of amendment request:* October 8, 1987

*Description of amendment request:* The amendment would modify the Unit 1 and 2 Technical Specifications (TS) defining fuel Average Planar Linear Heat Generation Rate (APLHGR) limits and Emergency Core Cooling System (ECCS) surveillance requirements. Specifically, the TS modifications requested would: (1) revise the APLHGR limits for General Electric BP8X8R and P8X8R fuel types (Units 1 and 2); (2) add an APLHGR limit for BP8DRB301L and P8DRB301L fuel types (Units 1 and 2); (3) revise the minimum flowrate surveillance requirement for the Core Spray System (Units 1 and 2), and revise the maximum response time surveillance requirements for the Core Spray System and the Residual Heat Removal System (Low Pressure Coolant Injection Mode) (Unit 2 only); and (4) revise the Bases to reflect the Plant Hatch SAFER/GESTR-LOCA analysis and delete APLHGR limits for the fuel that will not be used (Units 1 and 2).

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

*Proposed Change 1:* The licensee states that the proposed revisions to the APLHGR limits for both Unit 1 and Unit 2 were calculated for the BP8X8R and P8X8R fuel types using the NRC-approved SAFER/GESTR-LOCA and GEMINI physics methods. No change to the plant design or procedures will occur as a result of this change. The consequences of a design basis loss of coolant accident (LOCA) have been calculated and have been shown to be less severe than those predicted to occur using APLHGR limits as presently in the TS calculated using the earlier SAFE-REFLOOD analytical method. The change thus does not create the possibility of a new or different type of accident, increase the probability or consequences of an accident previously analyzed, or decrease the margin of safety.

*Proposed Change 2:* The licensee states that the change would add an APLHGR limit curve to the TS for each unit to allow the use of General Electric fuel types BP8DRB301L and P8DRB301L. Use of the new fuel types has been generically approved and their use would not result in any change to the plant design or procedures, nor would it significantly increase the probability or consequences of an accident previously analyzed. Use of the new fuel types would not create the possibility of a new or different type of accident, nor would use of the new fuel types result in a significant reduction in the margin of safety.

*Proposed Change 3:* This change would reduce the minimum flowrate for the core spray systems for Units 1 and 2, and increase the ECCS maximum response times for the Unit 2 core spray system and the Unit 2 RHR system in the low pressure coolant injection (LPCI) mode. The licensee states that these changes would not result in an increase in the probability of an accident previously evaluated since the limits are unrelated to initiating events. The performance of the equipment during a LOCA has been evaluated in light of the proposed changes and has been shown to meet all applicable ECCS acceptance criteria. Therefore, the changes would not result in a significant increase in the consequences of an accident previously evaluated. Since no changes to plant design or procedures are involved, the change would not create the possibility of a new or different kind of accident. No significant reduction in the margin of safety would result since the revised flowrate and response times have been shown to maintain all existing fuel safety margins associated with ECCS performance.

*Proposed Change 4:* This change would revise the Bases sections for the TS of each unit to reflect use of the new SAFER/GESTR-LOCA analytical methods and would delete existing APLHGR limits for all 7 X 7 fuel types, for other non-prepressurized fuel, and for one prepressurized fuel type. These changes are administrative in nature and would not affect plant safety.

On the basis of the above, we conclude that the proposed changes do not (1) increase the probability or consequences of accidents previously evaluated, (2) create the possibility of a new or different kind of accident, or (3) involve a reduction in the margin of safety.

Therefore, the Commission has made a proposed determination that the amendment application does not involve a significant hazards consideration.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

*Attorney for licensee:* Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Lawrence P. Crocker, Acting.

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia**

*Date of amendment request:* September 22, 1987.

*Description of amendment request:* The amendment would modify the Technical Specifications (TS) to: (1) reduce the limits on the volume of the sodium pentaborate solution in the Standby Liquid Control System (SLCS) and the amount of sodium pentaborate in the solution to reflect the use of sodium pentaborate that has been enriched in the Boron-10 isotope; (2) change the form of the limits from specifying a minimum solution volume and weight of sodium pentaborate in solution to specifying a permissible region of operation on a volume versus concentration graph; and (3) add a surveillance requirement to require periodic testing of the isotopic enrichment of Boron-10 in the sodium pentaborate solution.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR Part 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has indicated that the reliability and function of the SLCS are unaffected by this change. However, enrichment in the Boron-10 isotope in the sodium pentaborate solution will

increase the rate at which Boron-10 atoms are delivered to the reactor core, resulting in a more rapid shutdown of the reactor. Replacing the weight and volume limits for the sodium pentaborate solution with a volume versus concentration curve affects only the acceptance criteria for the surveillance tests. This change reduces the possibility for human error since it eliminates the necessity of converting volume and concentration (the parameters that always have been measured) to weight of sodium pentaborate. The added surveillance requirement to periodically verify the isotopic concentration of the Boron-10 isotope in the sodium pentaborate solution provides assurance that the minimum concentration of Boron-10 is maintained. Reducing the concentration of the sodium pentaborate solution results in a decrease in the precipitation temperature, which reduces the possibility of system failure due to sodium pentaborate precipitation. Overall, the proposed changes would provide for faster shutdown of the reactor by the SLCS, would reduce the likelihood of human error in determining the amount of sodium pentaborate in the solution, and would reduce the likelihood of system problems caused by precipitation of the sodium pentaborate.

On the basis of the above, we conclude that the proposed changes do not (1) increase the probability or consequences of accidents previously evaluated, (2) create the possibility of a new or different kind of accident, or (3) involve a reduction in the margin of safety.

Therefore, the Commission has made a proposed determination that the amendment application does not involve a significant hazards consideration.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

*Attorney for licensee:* Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Lawrence P. Crocker, Acting.

**Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* August 28, 1987.

*Description of amendment request:* The proposed change would add the as-built primary and backup overcurrent protective devices used to protect the polar crane's containment electrical penetration to Technical Specification Table 3.8-1. The reason for the proposed change is to document the fact that the polar crane's containment electrical penetration has adequate overcurrent protection so that it may be energized when the reactor is in Modes 1, 2, 3 or 4.

Technical Specification Limiting Condition for Operation (LCO) 3.8.4.1 currently requires all containment penetration conductor overcurrent protection devices shown on Table 3.8-1 to be operable whenever the reactor is in Modes 1, 2, 3 or 4. With respect to the polar crane, Table 3.8-1 currently states that the primary breaker is locked out in the open position during operation in Modes 1, 2, 3 and 4; hence, there is no requirement to list the actual primary or backup protection. The proposed change will simply remove the sentence stating that the primary breaker is locked out in the open position during operation in Modes 1, 2, 3 and 4, and insert the as-built overcurrent protective devices that are actually installed.

*Basis for proposed no significant hazards consideration determination:* The NRC staff proposes that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of any accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The primary safety concern involved with this proposed change that must be addressed when using the polar crane in Modes 1 through 4 (aside from heavy loads considerations) is the possibility of generating an overcurrent condition on the polar crane's containment electrical penetration (CEP) that could damage the CEP sufficiently to compromise containment integrity. Since containment integrity must be maintained to show acceptable results for the large break LOCA event, the polar crane must have adequate overcurrent protection. As described in FSAR Section 8.3.1.1.4 and Figure 8.3-29, the polar crane's electrical system has been designed and constructed to preclude potential CEP damage by incorporating both primary and backup protection against possible overcurrent conditions. Primary overcurrent protection is provided at the polar crane electrical breaker by a solid state trip device and associated relays. If the polar crane breaker does not trip within 2 seconds of the initiation of an overcurrent condition, backup protection is provided via a transfer trip circuit that is designed to trip the upstream 4.16 kv breaker that supplies power to the polar crane's 480 volt electrical bus. Thus, the polar crane's CEP is adequately protected against an overcurrent condition and operation of the polar crane in Modes 1 through 4 will not result in an event which could compromise containment integrity.

An additional safety concern that must be addressed when using the polar crane is the potential that heavy loads, if dropped, could impact irradiated fuel in the reactor vessel or equipment necessary for the safe shutdown of the reactor. However, since the licensee has previously demonstrated compliance with the requirements of NUREG-0612, "Control of Heavy Loads at Nuclear Power Plants," and the associated Generic Letter, it has been shown that heavy loads will either not occur or will occur with consequences no more severe than previously analyzed. Therefore, since the polar crane's CEP is adequately protected against a potential overcurrent condition and since all heavy loads requirements have been satisfied, the proposed change will not result in an increase in the probability or consequences of any accident previously evaluated.

(2) The proposed change does not involve any physical modifications to plant systems, structures or components. The overcurrent protection devices described previously reflect the actual as-built components that are already an integral part of the polar crane's electrical system and meet all applicable requirements for overcurrent protection. In addition, since the polar crane is used very infrequently in Modes 1 through 4, the licensee plans to continue the current practice of locking out the primary breaker in the open position whenever the polar crane is not in use (as described in the existing Technical Specification). Thus, since there has been no change to the level of overcurrent protection for the polar crane's containment electrical penetration, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The intent of this Technical Specification is to ensure there is adequate overcurrent protection for all containment electrical penetrations. As described in Technical Specification Bases 3/4.8.4, "Containment electrical penetrations and penetration conductors are protected by either deenergizing circuits not required during reactor

operation or by demonstrating the operability of primary and backup overcurrent protection circuit breakers during periodic surveillance." Since the proposed change utilizes both the above mentioned methods of overcurrent protection, and since the heavy loads requirements of NUREG-0612 have been satisfied, the proposed change will not involve a significant reduction in the margin of safety.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards consideration. Example (ii) relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specification (i.e., a more stringent surveillance requirement).

In this case, the proposed change is similar to Example (ii) in that the proposed change adds operability and surveillance requirements for the primary and backup overcurrent protection devices that are not currently part of the Technical Specifications. As a result, the corresponding Remarks section of Table 3.8-1, will be revised so that credit can be taken for the proposed surveillance, thereby allowing the polar crane to be used in the specified modes.

The staff has reviewed the licensee's no significant hazards consideration analysis. Based on the review and above discussions the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

*Attorney for licensee:* Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Jose A. Calvo.

**Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* October 20, 1987

*Description of amendment request:* The amendment would change the Technical Specifications Surveillance Requirements to increase the specified interval for performance of the diesel generator inspection per manufacturer's recommendations, from annually to 18 months. The proposed amendment would also specify that the inspection be performed during shutdown conditions.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: (iv) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (SRP); for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

The Standard Review Plan acceptance criterion for diesel generator inspections conducted in accordance with the manufacturer's recommendations is as stated in NUREG-0123 para. 4.8.1.1.2.d. The interval prescribed by NUREG-0123 for the periodic inspection is 18 months. This interval is based on the intention that such inspections be conducted during refueling outages. The extension of the diesel generator inspection interval to 18 months, with the limitation that the inspections be conducted while the reactor is shutdown, may possibly increase the probability of a station blackout event due to the increased length of time that defects might go undiscovered. However, the proposed change is consistent with SRP acceptance criteria and is thus encompassed by example (iv).

Since the application for amendment involves proposed changes that are encompassed by an example for which no significant hazards considerations exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

*Attorney for licensee:* Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

*NRC Project Director:* Jose A. Calvo.

**Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* October 20, 1987.

*Description of amendment request:* The amendment would modify the Technical Specifications (Section 5 "Design Requirements") to: (1) Change the name of the new fuel storage facility to new fuel storage vault, (2) Add a statement that the new fuel storage vault K-effective limits are maintained when the maximum, exposure-dependent, K-infinity of the individual fuel bundles are equal to or less than 1.29, and (3) Add a statement that the spent fuel storage pool K-effective limit is similarly satisfied when the maximum, exposure-dependent K-infinity of the individual bundles is equal to or less than 1.29. Existing limitations that U-235 axial loading of fuel in the spent fuel storage pool not exceed 14.5 grams per axial centimeter, and calculated spent fuel pool K-effective value not exceed 0.9271 would be deleted.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include:

(i) A purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature.

(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example a more stringent surveillance requirement.

(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (SRP): for example, a change resulting from the application of a small refinement of a previously used calculations model or design method.

Change (1) is a change in nomenclature for purposes of consistency and is encompassed by example (i).

Change (2) was requested by the licensee for the purpose of providing consistency between the Technical Specifications requirements applicable to the new fuel storage vault and those applicable to the spent fuel storage pool. Change (2) would create a new limitation to ensure that no new fuel can be stored in the new fuel storage vault that would not also be permitted to be

stored in the spent fuel storage pool. The proposed K-infinity limit of 1.29 is less (more conservative) than the GESTAR II value of 1.31 presently acceptable on the basis of the criticality analysis. Change (2) would therefore constitute a new more restrictive limitation and is encompasses by example (ii).

The Standard Review Plan (SRP) acceptance criteria of NUREG-0123 specify the spent fuel storage pool Technical Specifications includes a K-effective limit of 0.95. The acceptance criteria do not specify how this is to be assured. The method currently used in the Cooper Technical Specifications is to limit the U-235 loading of the stored spent fuel assemblies to 14.5 grams per axial centimeter. This value corresponds to a worst-case configuration of 2.83 w/o fuel enrichment and a calculated spent fuel pool K-effective of 0.9271. An equally effective and more readily implemented method of ensuring spent fuel pool criticality safety is to limit the K-infinity of the individual fuel assemblies to be stored in the spent fuel storage pool. The latter method allows new fuel designs to be stored in the pool and allows for manufacturing tolerances while maintaining the same safety margin. Analyses using previously accepted and experimentally verified techniques have shown that if the fuel assembly K-infinity is limited to 1.29, the spent fuel pool K-effective value will not exceed the existing 0.95 SRP criterion. The proposed change would therefore allow greater flexibility in selection of fuel designs to be stored in the spent fuel pool without decreasing the margin to criticality. As a result of changing the method by which criticality margin is assured, and deleting the limitation on calculated K-effective based on 2.83 w/o fuel, the revised specification might possibly increase the probability or consequences of a fuel pool criticality accident. However, the change is consistent with SRP acceptance criteria. Change (2) is therefore encompassed by criterion (iv).

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 88305.

*Attorney for licensee:* Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

*NRC Project Director:* Jose A. Calvo.

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York**

*Date of amendment request:* August 19, 1987

*Description of amendment request:* The proposed amendment would extend the duration of the FitzPatrick operating license to forty (40) years from the date of issuance of the full-power license. The plant is currently licensed for operation for 40 years commencing with issuance of its construction permit. The current expiration date of May 20, 2010 would therefore be changed to May 20, 2014.

*Basis for proposed no significant hazards consideration determination:* In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination the staff must establish that operation in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed amendment does not involve hardware or procedural changes which may affect the probability or consequences of the design basis accidents evaluated in the Final Safety Analysis Report (FSAR). In these accident analyses, an operating lifetime of 40 years had been assumed. Thus, the probability of any previously evaluated accident will not be increased by the proposed amendment. The consequences of the proposed change, should an accident occur during the four year extension period, is best quantified as the change in radiation exposure of the general public from a postulated radioactive release. Since the current best estimate of future population around the FitzPatrick site is significantly less than that projected during the initial licensing period, the consequences of a postulated accident release would not be increased.

The proposed amendment, as noted above, involves no hardware or procedural changes. Furthermore, a 40-year operating life was assumed in the original plant design. The effects of aging electrical equipment, in accordance with 10 CFR 50.49, have been considered in the plant maintenance and replacement policies. Inspection and testing programs, in addition to maintenance and replacement, will assure full operability for the design lifetime. Therefore, operation of FitzPatrick in accordance with the proposed amendment will not create a new or different kind of accident.

The safety margins built into the FitzPatrick design were based on a 40-year service life. Therefore, operation of FitzPatrick in accordance with the proposed amendment will not reduce any margin of safety.

*Local Public Document Room location:* Penfield Library, State University College of Oswego, Oswego, New York.

*Attorney for licensee:* Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

*NRC Project Director:* Robert A. Capra, Director.

**Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont**

*Date of application for amendment:* April 28, 1987 and November 2, 1987.

*Description of amendment request:* The amendment would revise the Technical Specifications to reflect administrative changes to Section 6 of the Technical Specifications. More specifically these changes would include:

1. Reorganization of the current Chemistry and Health Physics Department into two separate departments and a change to the Plant Operations Review Committee (PORC) membership to reflect the two supervisors in this area.

2. An administrative correction to include a change previously granted in Amendment 79, but inadvertently deleted in Amendment 87.

3. Elimination of a reference to a non-existent group designation and clear definition of authority for designating PORC alternates.

4. A revision of the authority regarding review and approval of procedures.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of

a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

The organizational changes described in Section 6 (Administrative Controls) do not involve a significant increase in the probability or consequences of an accident previously evaluated because they are strictly organizational changes which will enhance station management and PORC review over plant activities associated with safe and effective operations. These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they likewise enhance organizational and station management review over plant activities related to safe effective operations. The changes do not involve a significant reduction in a margin of safety because they are intended to enhance management and PORC attention related to safe and effective operations, as well as clarify the Technical Specifications regarding certain management authority by removing a reference to a no longer functioning plant group, and additionally eliminating a redundant step in the review and approval of plant procedures with no adverse impact in plant safety or safety margins. Therefore, Vermont Yankee has determined that these changes have no significance and that the proposed amendment will not alter any of the accident analyses.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples. The examples of actions involving no significant hazards include a purely administrative change to Technical Specifications, for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature.

Based on the above, we have concluded that this change does not constitute a significant hazards consideration, as defined in 50.92(c), since the proposed changes to Section 6 (Administrative Controls) will have little or no impact on public health and safety and are strictly administrative in nature.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposed to determine that the proposed amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

*Attorney for licensee:* John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

*NRC Project Director:* Morton B. Fairtile, Acting Director.

## PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this biweekly notice. They are repeated here because the biweekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

**The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio.**

*Date of amendment request:* September 22, 1987.

*Brief description of amendment:* The amendment would make various changes to the organization charts, Figures 6.2.1-1 and 6.2.2-1 of the Technical Specifications, to revise titles and delete non-key positions.

*Date of publication of individual notice in* **Federal Register:** October 22, 1987 (52 FR 39576).

*Expiration date of individual notice:* November 23, 1987.

*Local Public Document Room location:* Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

## NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

**Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Unit 1 and 2, Houston County, Alabama.**

*Dates of application for amendments:* August 25, 1986, superseded June 2, 1978, supplemented September 16, and 23, 1987.

*Description of amendments:* Technical Specifications changes increase the steam generator tube plugging from 5 percent to 10 percent and increase the heat flux hot channel factor slightly.

*Date of issuance:* October 26, 1987.

*Effective date:* October 26, 1987.

*Amendment Nos.:* 73 and 65.

*Facilities Operating License Nos. NPF-2 and NPF-8.* Amendments revise the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 7, 1986 (51 FR 36082) and July 15, 1987 (52 FR 26582). The September 16, and 23, 1987 supplements made clarifying statements, but did not change the findings of the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1987.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

**Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona**

*Date of application for amendments:* August 10, 1987, as supplemented by letters dated September 22 and October 15, 1987.

*Brief description of amendments:* The amendments revised Section 6 of the Technical Specifications to incorporate changes reflecting a revised organizational structure for the Palo Verde plant.

*Date of issuance:* October 30, 1987

*Effective date:* October 30, 1987

*Amendment Nos.:* 25, 24 and 3

*Facility Operating License Nos. NPF-41, NPF-51 and NPF-65:* Amendments change the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 26, 1987 (52 FR 32191). The letters of September 22 and October 15, 1987 provided supplemental information which did not change the initial proposed determination of no significant hazards. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 1987.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

**Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland**

*Date of application for amendments:* July 31, October 17 and November 24, 1986, as supplemented January 12, February 23, March 24, April 3, and June 29, 1987.

*Brief description of amendments:* These amendments (1) change the surveillance interval for the following TS Surveillance Requirements that are generally performed during refueling from at least once per 18 months to at least once per refueling interval where a refueling interval is defined as 24 months: TS 4.1.2.2.C (boron injection flow path), 4.1.2.4.a (charging pumps), 4.4.13.2 (reactor coolant system vents), 4.5.1.e (reactor coolant system safety injection tanks), 4.5.2.e and f (emergency core cooling systems), 4.6.2.1.b (containment spray system), 4.6.3.1.b and d (containment iodine filter trains), 4.6.4.1.2 (containment isolation valves), 4.6.5.2.b (containment hydrogen recombiners), 4.7.3.1.b (component cooling water), 4.7.4.1.a (service water system), and 4.7.5.1.b (salt water system); (2) move TS Surveillance Requirements 4.6.4.1.4 and 4.6.4.1.5 from TS 3/4.6.4, "Containment Isolation Valves," to the "Containment Leakage" section of TS 3/4.6.1, "Primary Containment;" (3) add Limiting Condition for Operation Action Statement "e" to TS 3/4.6.4 making the provisions of Specification 3.0.4 not applicable provided that the affected penetration is isolated; and (4) change the definition of the phrase "fuel reload cycle" from 18 months to 24 months for TS 4.6.4.1.5 which provides the replacement interval for containment purge isolation valve seals.

*Date of issuance:* November 3, 1987

*Effective date:* November 3, 1987

*Amendment Nos.:* 128 and 110

*Facility Operating License Nos. DPR-53 and DPR-69.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 14, 1987 (51 FR 1550), March 12, 1987 (52 FR 7676), and April 8, 1987 (52 FR 11353). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 3, 1987.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Calvert County Library, Prince Frederick, Maryland.

**Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts**

*Date of application for amendment:* July 28, 1987.

*Brief description of amendment:* This amendment revises the Technical Specification for Table 4.2.A to specify the correct calibration frequency for the reactor high pressure instrument channel.

*Date of issuance:* October 28, 1987

*Effective date:* October 28, 1987

*Amendment No.:* 107

*Facility Operating License No. DPR-35:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 12, 1987 (52 FR 29912). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 1987.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

**Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts**

*Date of application for amendment:* May 22, 1987

*Brief Description of amendment:* The amendment revises the Technical Specification Table 3.2.B to clarify the requirements for the undervoltage relays.

*Date of issuance:* October 29, 1987

*Effective date:* 30 days from date of issuance.

*Amendment No.:* 108

*Facility Operating License No. DPR-35:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** July 29, 1987 (52 FR 28372). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1987.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

**Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts**

*Date of application for amendment:* June 1, 1987, as supplemented by September 1, 1987.

*Brief Description of amendment:* This amendment revised the Technical Specification to change the pressure range over which the high pressure coolant injection (HPCI) and the reactor core isolation cooling (RCIC) systems are required to operate.

*Date of issuance:* October 29, 1987

*Effective date:* 30 days from date of issuance.

*Amendment No.:* 109

*Facility Operating License No. DPR-35:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** July 29, 1987 (52 FR 28372). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1987.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

**Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina**

*Dates of application for amendments:* June 12, 1987, as supplemented September 10 and 11, 1987.

*Description of amendments:* Changes are made to the description of the fuel used in the core in Section 5.3.1 and the fuel storage parameters in Sections 5.6.1.1 and 5.6.1.2.

*Date of issuance:* October 27, 1987

*Effective date:* October 27, 1987

*Amendments Nos.:* 113 and 140

*Facility Operating License Nos. DPR-71 and DPR-62.* Amendments revise the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 23, 1987 (52 FR 35787) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1987

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

**Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York**

*Date of application for amendment:* August 6, 1987

*Brief description of amendment:* The amendment revises the Technical Specifications to further limit use of the containment purge and vent isolation valves during power operations and to clarify requirements relating to the application of containment isolation action statements.

*Date of issuance:* October 29, 1987

*Effective date:* October 29, 1987

*Amendment No.:* 126

*Facility Operating License No. DPR-26:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 25, 1985 (50 FR 38914) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1987

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

**Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan**

*Date of application for amendment:* May 4, 1987, as revised September 16, 1987

*Brief description of amendment:* This amendment revises the Technical Specifications for surveillance of the containment prestressing system to be consistent with the pending version of the ASME Boiler and Pressure Vessel Code, Section XI, Subsection IWL, and proposed Revision 3 to Regulatory Guide 1.35.

The initial notice gave this same description and the proposed no significant hazards consideration determination was based on this. The subsequent submittal by the licensee on September 16, 1987, rectified some inconsistencies between the May 4, 1987, proposed amendment and the above referenced documents thereby making the initial notice and basis for the proposed determination valid and no renotice was published.

*Date of issuance:* October 28, 1987

*Effective date:* October 28, 1987

*Amendment No.:* 109

*Provisional Operating License No. DPR-20.* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 12, 1987 (52 FR 29912). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 1987.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Van Zoeren Library, Hope College, Holland, Michigan 49423.

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* June 3, 1987

*Brief description of amendments:* The amendments modified Technical Specifications 3/4.1.3 "Movable Control Assemblies" and the Bases to provide a longer period of operation at power with inoperable but trippable control rods. The amendments also deleted reference to a figure which had been left blank and will not be used.

*Date of issuance:* November 5, 1987

*Effective date:* November 5, 1987

*Amendment Nos.:* 77 and 58

*Facility Operating License Nos. NPF-9 and NPF-17.* Amendments revised the Technical Specifications.

*Dates of initial notices in* **Federal Register:** July 15, 1987 (52 FR 26584) and March 25, 1987 (52 FR 9566) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 5, 1987

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

**Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania**

*Date of application for amendment:* July 28, 1986

*Brief description of amendments:* The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to bring the pump testing surveillance requirements to conformance with the requirements of 10 CFR 50.55a(g)4(i), and to conformance with similar requirements in Beaver Valley Unit 2.

*Date of issuance:* October 27, 1987

*Effective date:* October 27, 1987

*Amendment No.:* 117

*Facility Operating License No. DPR-66.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 10, 1986 (51 FR 32267) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1987

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

**Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida**

*Date of application of amendments:* March 17, 1987 (for Unit No. 1) and March 31, 1987 (for Unit No. 2).

*Brief description of amendments:* The amendments (1) changed the unit of reactivity from "delta k/k" to "pcm," (2) deleted requirements that are currently outdated, (3) corrected typographical errors, (4) provided the currently correct titles and composition of the Company Nuclear Review Board, and (5) deleted specific titles of NRC addressees.

*Date of Issuance:* October 23, 1987

*Effective Date:* October 23, 1987

*Amendment Nos.:* 86 and 25

*Facility Operating License Nos. DPR-67 and NPF-16:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 20, 1987 (52 FR 18979 for Unit No. 1, 52 FR 18980 for Unit No. 2).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 23, 1987.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida 33450.

**Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida**

*Date of application of amendments:* August 17, 1987

*Brief description of amendments:* The amendment changed a surveillance requirement dealing with a special test exception on shutdown margin. The time period within which a scram test must be performed prior to reducing the shutdown margin below specified limits is increased from 24 hours to 7 days.

*Date of Issuance:* October 28, 1987

*Effective Date:* October 28, 1987

*Amendment Nos.:* 87 and 26

*Facility Operating License Nos. DPR-67 and NPF-16:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 9, 1987 (52 FR 34004) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 28, 1987.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida 33450.

**Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana**

*Date of application for amendment:* August 24, 1987.

*Brief description of amendment:* This amendment modifies the standby liquid control system technical specifications because of system modifications required to meet the rule on anticipated transients without scram, 10 CFR 50.62.

*Date of issuance:* October 26, 1987

*Effective date:* October 26, 1987

*Amendment No.* 13

*Facility Operating License No. NPF-47.* This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 23, 1987 (52 FR 35792). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1987.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

**Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana**

*Date of application for amendment:* August 5, 1987 as supplemented August 24, 1987.

*Brief description of amendment:* The amendment modified license condition 2.C(14), Attachment 5, Item 2, and added a new item 3 to defer the installation of neutron flux instrumentation that conforms to Regulatory Guide 1.97, Revision 2, from prior to startup from the first refueling outage until prior to startup from the second refueling outage.

*Date of issuance:* October 26, 1987

*Effective date:* October 26, 1987

*Amendment No.* 14

*Facility Operating License No. NPF-47.* This amendment revised the License.

*Date of initial notice in* **Federal Register:** September 23, 1987 (52 FR 35792) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1987.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

**Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana**

*Date of application for amendment:* August 4, 1986 as amended August 15, 1986, supplemented September 26, 1986 amended September 8, 1987 and supplemented October 8, 1987.

*Brief description of amendment:* The amendment modified Attachment 3 to Facility Operating License No. NPF-47 regarding maintenance and surveillance for the TDI emergency generators. License condition 2.C(8) requires that Gulf States Utilities implement the TDI diesel requirements as specified in Attachment 3.

*Date of issuance:* November 2, 1987

*Effective date:* November 2, 1987

*Amendment No.:* 15

*Facility Operating License No. NPF-47.* This amendment revised the License.

*Date of initial notice in* **Federal Register:** October 22, 1986 (51 FR 37512) and September 30, 1987 (52 FR 36649). The licensee's October 8, 1987 submittal provided a status of the TDI emergency diesel generator program and did not alter the NRC staff's determination of no significant hazards as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1987.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

**Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana**

*Date of application for amendment:* September 8, 1987

*Brief description of amendment:* The amendment modified license condition 2.C(1), Attachment 1, Item 4 and added new items 5, 6 and 7. This change extends the completion date for the installation of additional communication equipment from prior to startup from the first refueling outage until May 31, 1988 with final testing and further modifications if necessary, to be completed prior to restart from the second refueling outage. License condition 2.D was also updated to specify the current approved versions of the River Bend Physical Security Plan, River Bend Guard Training and Qualification Plan, and River Bend Safeguard Contingency Plan and to add a reference to the Miscellaneous Amendments and Search Requirements revisions to 10 CFR 73.55.

*Date of issuance:* November 2, 1987

*Effective date:* November 2, 1987

*Amendment No.:* 16

*Facility Operating License No. NPF-47.* This amendment revised the License.

*Date of initial notice in* **Federal Register:** September 30, 1987 (52 FR 36650) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1987.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of application for amendment:* October 17, 1984, as supplemented by a letter dated April 30, 1986.

*Brief description of amendment:* The amendment revises the Duane Arnold Energy Center Technical Specifications (TSs) to direct operator action in the event that the Limiting Condition for Operation in TS 3.5.H regarding

maintaining certain discharge pipes filled cannot be met.

*Date of issuance:* October 29, 1987
*Effective date:* October 29, 1987
*Amendment No.:* 147
*Facility Operating License No. DPR-49.* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** December 31, 1984 (50 FR 806) and June 18, 1986 (51 FR 22238) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1987.
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

**Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* October 31, 1986, modified by letter dated August 28, 1987.
*Brief description of amendment:* The amendment changes the Technical Specifications to reflect recent modifications to the drywell pressure and temperature monitoring instruments.
*Date of issuance:* October 27, 1987
*Effective date:* October 27, 1987
*Amendment No.:* 112
*Facility Operating License No. DPR-62.* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** December 17, 1986 (52 FR 45211) The August 28, 1987 submittal provided additional clarifying information and did not change the finding of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1987.
*No significant hazards consideration comments received:* No.
*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

**Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania**

*Date of application for amendment:* June 19, 1987
*Brief description of amendment:* This amendment revised the Susquehanna Steam Electric Station (SSES) Unit 1 Technical Specifications to include four new circuit breakers in the surveillance table for the overcurrent protection devices.
*Date of issuance:* November 6, 1987
*Effective date:* Upon startup for Cycle 4 operation.
*Amendment No.* 73
*Facility Operating License No. NPF-14.* This amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** July 15, 1987 (52 FR 26593) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 1987.
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of application for amendment:* March 16, 1987
*Brief description of amendment:* The amendment would change the Technical Specifications to include revised limits that restrict operating pressures and temperatures to assure that brittle fracture of the reactor vessel cannot occur and that vessel integrity is maintained.
*Date of issuance:* October 22, 1987
*Effective date:* October 22, 1987
*Amendment No.:* 113
*Facility Operating License No. DPR-59:* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** May 20, 1987 (52 FR 18987) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1987.
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* Penfield Library, State University College of Oswego, Oswego, New York.

**Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York**

*Date of application for amendment:* November 10, 1983 as supplemented by letters dated January 21, 1986, February 13, 1987, March 9, 1987, April 14, 1987, and October 2, 1987.
*Brief description of amendment:* This amendment changes the requirements of the Technical Specifications related to the definition of operability.
*Date of issuance:* October 27, 1987
*Effective date:* October 27, 1987
*Amendment No.:* 24
*Facility Operating License No. DPR-18.* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** January 26, 1984 (49 FR 3353) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1987
*No significant hazards consideration comments received:* No.
*Local Public Document Room location:* Rochester Public Library, 115 South Avenue, Rochester, New York 14610.
*NRC Project Director:* Victor Nerses, Acting Director.

**Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California**

*Date of application for amendment:* February 20, 1987 as supplemented June 2, 1987.
*Brief description of amendment:* The amendment revised (1) the Bases of Technical Specification 3.1.6, "Leakage," and (2) Technical Specification 3.8, "Fuel Loading and Refueling" concerning requirements for monitoring airborne radioactivity inside the containment.
*Date of issuance:* October 23, 1987
*Effective date:* October 23, 1987
*Amendment No.:* 86
*Facility Operating License No. DPR-54:* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** August 12, 1987 (52 F.R. 29928) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 23, 1987.
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

**Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California**

*Dates of applications for amendments:* January 29, February 14, March 20, and June 13, 1986.
*Brief description of amendments:* These amendments make numerous administrative changes to the Station's Technical Specifications (TSs) and their bases to correct typographical errors, correct punctuations, change nomenclature, number previously unnumbered pages, define a previously undefined time period, update the table of contents, correct inadvertent errors originating from various previously approved amendments, and to achieve clarity and consistency throughout the TSs.

*Date of issuance:* October 27, 1987
*Effective date:* October 27, 1987
*Amendment No:* 87
*Facility Operating License No. DPR-54:* Amendments revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** November 5, 1986 (52 FR 40282) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1987.
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* Sacramento City-County Library, 828 I Street, Sacramento, California 95814

**Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California**

*Dates of application for amendment:* June 29, 1987.
*Brief description of amendments:* The amendment adds a new Technical Specification 3.29, "Meteorological Monitoring Instrumentation."
*Date of Issuance:* October 27, 1987
*Effective date:* October 27, 1987
*Amendment Nos:* 88
*Facility Operating License No. DPR-54:* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** September 9, 1987 (52 FR 34018) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1987.
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

**Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California**

*Date of application for amendment:* June 18, 1986, as supplemented January 7, 1987.
*Brief description of amendment:* The amendment deleted the Technical Specification surveillance requirements associated with the Reactor Building Upper Dome Air Circulators since an alternate means for circulating containment air following a Loss of Coolant Accident is provided.
*Date of issuance:* November 3, 1987
*Effective date:* November 3, 1987
*Amendment No.:* 89
*Facility Operating License No. DPR-54:* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** February 26, 1987 (52 FR 5867) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 1987.
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendments:* January 21, 1987, as clarified March 25, 1987.
*Brief description of amendments:* These amendments delete the Technical Specification requirements for the chlorine detection system.
*Date of issuance:* October 30, 1987
*Effective date:* October 30, 1987
*Amendment Nos.:* 62, 54
*Facility Operating Licenses Nos. DPR-77 and DPR-79.* Amendments revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** March 12, 1987 (52 FR 7697). The March 25, 1987 submittal provided clarifying information which did not change the initial application nor the initial no significant hazards consideration finding. Therefore, renotice was not warranted. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 1987
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

**Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of application for amendment:* June 19, 1987
*Brief description of amendment:* The amendment revises Wolf Creek Generating Station (WCGS) Technical Specification 3.5-1, Accumulators, to allow the Unit to remain in Hot Standby with Reactor Coolant System pressure less than or equal to 1000 psig with one accumulator inoperable.
*Date of issuance:* November 2, 1987
*Effective date:* November 2, 1987
*Amendment No.:* 11
*Facility Operating License No. NPF-42.* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** July 15, 1987 (52 FR 26604) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1987.
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas

**Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of application for amendment:* June 16, 1987
*Brief description of amendment:* The amendment revises Wolf Creek Generating Station (WCGS) Technical Specification 3/4.3.1, Reactor Trip System Instrumentation, in the area of specified surveillance intervals and out-of-service times for Reactor Protection System Instrumentation. The requested revisions are based on changes approved generically as a result of the Nuclear Regulatory Commission's review of WCAP-10271, "Evaluation of Surveillance Frequencies and Out of Service Times for the Reactor Protection Instrumentation System" and WCAP-10271, Supplement 1.
The proposed changes are as follows:
1. Increase the surveillance interval for RPS analog channel operational tests from once per month to once per quarter,
2. Increase the time during which an inoperable RPS analog channel may be maintained in an untripped condition from one hour to six hours, and
3. Increase the time an inoperable RPS analog channel may be bypassed to allow testing of another channel in the same function from two hours to four hours.
*Date of issuance:* November 2, 1987
*Effective date:* November 2, 1987
*Amendment No.:* 12
*Facility Operating License No. NPF-42.* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** July 15, 1987 (52 FR 26603) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1987.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas

**NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By December 18, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any

limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (**Project Director**): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

**Carolina Power & Light Company, et al. Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina**

*Date of application for amendment:* October 15, 1987, as supplemented by letter dated October 29, 1987.

*Brief description of amendment:* The amendment revises Technical Specification 4.8.1.1.2.f.11 to ensure that during a diesel generator load rejection test, the diesel generator voltage does not exceed 110 percent of the diesel generator voltage at the start of the test, rather than the limiting value of 7590 volts currently stipulated in the Technical Specifications.

*Date of issuance:* October 30, 1987

*Effective date:* October 30, 1987

*Amendment No.* 2

*Facility Operating License No. NPF-63.* Amendment revised the Technical Specifications.

*Public Comments Requested as to Proposed No Significant Hazards Consideration:* Yes, published in the **Federal Register** on October 22, 1987 (52 FR 39577) for a 15 day public comment period. However, the amendment has been issued on a emergency basis prior to the expiration of the 15 day comment period to avoid delay in the startup of the plant.

*Comments Received:* No

The Commission's related evaluation of the amendment, finding of emergency circumstances and final determination of no significant hazards determination is contained in a Safety Evaluation dated October 30, 1987.

*No significant hazards consideration comments received:* No

*Attorney for the Licensee:* Thomas A. Baxter, Esq.; Shaw, Pittman, Potts and Trowbridge; 2300 N Street, NW., Washington, DC 20037

*Local Public Document Room location:* Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

Dated at Bethesda, Maryland this 12th day of November, 1987.

For the Nuclear Regulatory Commission

**Steven A. Varga,**

*Director, Division of Reactor Projects-I/II*

*Office of Nuclear Reactor Regulation*

[Doc. 87-26492 Filed 11-17-87; 8:45 am]

BILLING CODE 7590-01-D

## PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

### Columbia River Basin Fish and Wildlife Program; Final Amendments Regarding Umatilla Fish Hatchery

**AGENCY:** Pacific Northwest Electric Power and Conservation Planning Council.

**ACTION:** Notice of final amendments.

**SUMMARY:** On November 15, 1982, the Pacific Northwest Electric Power and Conservation Planning Council (the Council) adopted a Columbia River Basin Fish and Wildlife Program (fish and wildlife program). The fish and wildlife program has been amended on several occasions since then. In August 1987, the Council proposed to amend the Fish and Wildlife Program to provide for demonstration of oxygen supplementation at the Umatilla Hatchery in Oregon. The Council has now adopted final amendments.

**FOR FURTHER INFORMATION CONTACT:** Dulcy Mahar, director of public information and involvement, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205 (toll-free 1-800-222-3355 in Idaho, Montana and Washington; toll-free 1-800-452-2324 in Oregon; or 503-222-5161).

**SUPPLEMENTARY INFORMATION:** On November 15, 1982, as required by the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501, 94 Stat. 2697, 16 U.S.C. 839 *et seq.* (the Act), the Council adopted a Columbia River Basin Fish and Wildlife Program. The Act allows the Council to amend its program from time to time.

In August, 1987, the Council proposed to amend the Fish and Wildlife Program to provide for testing of oxygen supplementation at the Umatilla Hatchery (52 FR 32858, August 31, 1987). The proposed amendment was motivated by the belief that substantially more fish could be produced at lower cost through the use of oxygen supplementation techniques. The proposed amendment was released for public review and comment, and comments were received through September 30, 1987. Public hearings were held on September 10, 1987 in Idaho Falls, Idaho; on September 15, 1987 in Yakima, Washington; on September 21, 1987 in Helena, Montana; and on September 25, 1987 in Portland, Oregon. On October 15, 1987, the Council deliberated and adopted amendments. This notice sets forth the final amendments, summarizes the public comments, and responds to those comments.

**Text of Final Amendment**

Amend Program Section 703(f)(1)(A) to read:

(f) Construction of Major Production Facilities

(1) Bonneville shall fund the Confederated Tribes of the Umatilla Reservation of Oregon to operate and maintain the Bonifer and Minthorn juvenile release and adult collection and holding facilities on the reservation. Bonneville also shall fund the construction of a facility to demonstrate the use of oxygen supplementation hatchery techniques to produce summer steelhead and chinook salmon smolts for release in the Umatilla juvenile release and adult collection and holding facilities and for outplanting in the

upper Umatilla River to enhance natural and hatchery production.

(A) Prior to construction of this facility, the Oregon Department of Fish and Wildlife and the Confederated Tribes of the Umatilla Reservation of Oregon will develop a facility master plan for Council approval. The master plan will include for each stock:

(i) Rearing schedule and release sites and schedules;

(ii) A detailed production profile that includes the brood stock source, numbers of fish to be released, and the expected annual adult returns;

(iii) A description of related harvest plans;

(iv) Proposed management policies and hatchery practices to ensure that hatchery releases protect genetic integrity of native stocks, are disease-free, and are coordinated with other fish and wildlife agencies and tribes in the Columbia River Basin;

(v) A proposal for biological monitoring and evaluation studies to assess the effectiveness of outplanting facilities in supplementing natural production in a biologically sound manner; to assess the effects of the outplanting on resident fish populations; and to assess the effectiveness of oxygen supplementation hatchery techniques; and

(vi) Evidence of coordination with system planning described in Section 205; System Planning.

**Summary and Response To Comments**

All entities commenting on the proposed amendment expressed support for it.

1. *Hatchery capacity.* The Bonneville Power Administration ("Bonneville") favored eliminating the proposed amendment's 290,000 pound production limit. They believe the limit would unnecessarily constrain future activities and raise question should production vary as a result of annual changes.

*Council Response*: The purpose of the amendment is to allow demonstration of oxygen supplementation, and the Council wishes to leave Bonneville a reasonable degree of flexibility to conduct the demonstration. This may require occasional or minor variations from the planned production target, and according the Council has deleted the 290,000 pound limit from the amendment language. At the same time, however, the facility has been characterized as one that will produce no more than 290,000 pounds of fish, and public comment was received on that basis. Therefore, the Council expects that the facility will in general be operated in accordance with the 290,000 pounds production target. If Bonneville wishes to expand the hatchery beyond this target on more than a limited basis, it should seek Council approval. Annual production goals to be spelled out in the hatchery master plan, and annual operating plans specifying production targets for each stock should be generally consistent with the 290,000 production goal.

2. *Area in which production may be used.* Bonneville commented that the production releases should not be limited to the Umatilla subbasin, but rather that the Umatilla subbasin should have the first call on production up to the capacity of the hatchery. If in any given year Umatilla production needs were below hatchery production levels, fish could be produced for other locations. The Oregon Department of Fish and Wildlife ("ODFW") said that it has a general policy of using hatchery production on an as-needed basis, and does not dedicate production to one stream system. The Pacific Northwest Utilities Conference Committee ("PNUCC") commented that it believes the Umatilla production should also be available to be used elsewhere.

*Council Response*: The program currently provides that the Umatilla hatchery production will be outplanted in the upper Umatilla River. The Council believes that flexibility may eventually be needed to enable use of production elsewhere once the Umatilla basin needs are satisfied, but has decided not to provide for such flexibility at this time. Subbasin and system planning may identify opportunities for use of any surplus Umatilla hatchery production capacity to supplement production in other rivers and the issue may be considered in connection with that process.

3. *"Demonstration" project.* Bonneville commented that the project should be viewed as a "demonstration" instead of a "test," because major production releases will occur from both oxygenated and and non-oxygenated rearing groups. ODFW agreed with Bonneville's comments.

*Council Response*: The Council recognizes this distinction, and has modified the amendment accordingly.

4. *Hatchery objectives.* The Washington Department of Fisheries supported the demonstration of the oxygen supplementation technology and looks forward to the results of the monitoring and evaluation to guide further efforts in this direction. It also noted this hatchery is not being built only to demonstrate oxygen supplementation, but also to contribute to the Council's doubling goal.

*Council Response*: The hatchery is intended to contribute to enhance natural and hatchery production in a biologically sound manner, and to demonstrate the use of oxygen supplementation techniques. Achieving these objectives should help reach the doubling goal, consistent with the Council's system policies. These objectives should be elaborated in greater detail in the forthcoming master plan.

5. *Tests of oxygen supplementation in other areas.* One final comment was received regarding the previous use of oxygen in West Coast salmonid hatcheries. A biologist in White Swan, Washington, wanted to be certain that the Council was aware of the literature on use of oxygen in west coast hatcheries.

*Council Response*: The Council reviewed the available literature and found that private aquaculture in Oregon has used oxygen supplementation in rearing coho and chinook. The work already undertaken attempted to determine injection methods, loading rates and other basic operational procedures. This work and work in Michigan has addressed the question whether the method works for salmonids in general, but it has not determined adult survival for ocean migrating salmon and steelhead. The demonstration should provide that information.

6. *Local impacts*: Morrow County officials support the hatchery facility, but were concerned with possible impacts on roads and traffic.

*Council Response*: To the extent that construction of a hatchery damages county roads, the Council would consider expenditures by Bonneville to repair such damage to be properly chargeable to the hatchery. To the extent the hatchery generates significant additional traffic, the Council would support construction of an interchange by appropriate highway officials.

**Edward Sheets,**

*Executive Director.*

[FR Doc. 87-26522 Filed 11-17-87; 8:45 am]

BILLING CODE 0000-00-M

## Northwest Conservation and Electric Power Plan; Final Model Conservation Standards

**AGENCY:** Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

**ACTION:** Notice of final amendment regarding model conservation standards for new and existing structures, utility, customer, and governmental conservation programs, and other

consumer actions for achieving conservation except in areas for which model conservation standards already exist.

**SUMMARY:** On April 23, 1983, the Pacific Northwest Electric and Conservation Planning Council (Council) adopted, pursuant to the Pacific Northwest Electric Power and Conservation Act, Pub. L. 96-501, 94 Stat. 2697, 16 U.S.C. 839 *et seq.* (the Act), a Northwest Conservation and Electric Power Plan (Power Plan), including model conservation standards (MCS) for new residential and commercial structures, and for buildings converting to electric space conditioning (48 FR 24493, June 1, 1983). On December 4, 1985, the Council adopted amendments to the MCS (52 FR 7364, March 3, 1986) which were later incorporated in the 1986 plan amendments (51 FR 16239, May 1, 1986). The most recent amendments of the MCS were adopted by the Council at its January 14, 1987, meeting (52 FR 9738, March 26, 1987). At its March 11, 1987, meeting, the Council voted to enter rulemaking to add to the existing MCS model standards for all sectors and end-uses of electricity not already covered. On April 2, 1987, the Council published a notice of proposed amendments that also established a schedule for public comment (52 FR 10646). Hearings were conducted in each of the four Northwest states, as required by statute. Thirteen organizations commented during the comment period which closed at 5:00 p.m. on September 11, 1987. At its October 14-15, 1987 meeting held in Helena, Montana the Council adopted final amendments. This notice sets forth a brief summary of the final amendments and provides information on how to obtain additional information, including copies of the full text of the amendment document as well as the Council's response to public comment.

**FOR FURTHER INFORMATION CONTACT:** Dulcy Mahar, Director of Public Information and Involvement, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205 (toll-free 1-800-222-3355 in Idaho, Montana and Washington; toll-free 1-800-452-2324 in Oregon; or 503-222-5161).

**SUPPLEMENTARY INFORMATION:** The Act states that "Model conservation standards to be included in the [Council's] plan shall include, but not be limited to, standards applicable to (A) new and existing structures, (B) utility, customer, and governmental conservation programs, and (C) other consumer actions for achieving conservation." Section 4(f)(1). Upon consideration of a petition requesting that the Council adopt model standards for the particular conservation activities related to residential weatherization in the region, the Council has adopted amendments to the Power Plan that will apply to all sectors and end uses not already covered by the existing MCS, including residential weatherization.

The amendments recommend that during the Northwest's current period of electricity surplus, conservation activities that can be deferred without detrimental consequences be deferred. If a governmental organization or a utility chooses to carry out conservation activities during this period, however, the standards set forth six objectives that should be met.

1. New and existing structures, utility, customer, and governmental conservation programs and other conservation activities should avoid creating lost opportunities. All lost-opportunity measures should be captured during any conservation action.

2. Conservation programs should install only those measures that are cost-effective in the long run as defined in the Power Plan. A record of measures that aren't installed in the current program should be kept so that they may be installed in the future, when the region begins actively searching for electricity resources.

3. When payments are necessary to secure lost-opportunity resources, utilities should, at a minimum, provide financial assistance that ensures economic feasibility to the consumer.

4. Conservation program benefits should be distributed equitably throughout the region.

5. Conservation activities should not damage environmental quality.

6. Conservation activities undertaken during the surplus should contribute to the region's capability to implement conservation when resources are needed.

7. Programs should be designed to avoid significant alteration of a consumer's choice of fuel in new and existing structures.

Legal Effect of this notice: The Act provides that suits seeking judicial review of these final amendments must be filed on or before January 19, 1988 (16 U.S.C. 839f(e)(5)).

**Edward Sheets,**

*Executive Director.*

[FR Doc. 87-26521 Filed 11-17-87; 8:45 am]

BILLING CODE 0000-00-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-25109; File No. SR-DTC-87-15]**

## Self-Regulatory Organizations; Proposed Rule Change by Depository Trust Co.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 19, 1987, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change being filed by DTC consists of the Participant Operating Procedures relating to DTC's Tax Exempt Dividend Service ("TEDS"). DTC recently filed with the Commission SR-DTC-87-11, pursuant to which DTC initiated TEDS on a pilot basis to benefit certain classes of U.S. investors who are exempt from Canadian withholding tax on dividends and other distributions attributable to Canadian securities. DTC now proposes full implementation of TEDS. Until recently, Canadian authorities required Canadian paying agents to withhold tax when they paid DTC's nominee Cede & Co. dividends and other distributions attributable to Canadian securities. Beneficial owners of securities on deposit at DTC which were exempt from the Canadian withholding tax nevertheless received only the decreased amount through DTC and had to claim on the Canadian government for refund. The time period between withholding and eventual refund could be substantial. This delay between withholding and refund and the inconvenience and expense of the refund claim procedure prompted some DTC Participants to consider withdrawing Canadian securities from DTC for re-registration in physical certificate form in their own or special nominee names approved by Revenue Canada. The full implementation of TEDS will enable all DTC Participants to receive, on behalf of certain tax-exempt beneficial owners whose securities are held at DTC, 100% of their Canadian dividend and similar payments on payable date through DTC's dividends payment system

(subject to foreign exchange conversion rate limitations). Revenue Canada authorized the TEDS pilot program and is expected to authorize full implementation of TEDS shortly.

**II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The main purpose of TEDS is to eliminate a disincentive to the immobilization of Canadian securities at DTC. The statutory bases for encouraging immobilization are section 17A(e) of the Securities Exchange Act of 1934, as amended, and Article XXI of the Canada-United States of America Income Tax Convention (1980).

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC perceives no impact on competition by reason of the proposed rule change.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

TEDS has been developed in response to requests by DTC Participants. Written comments from DTC Participants or others have not been solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number (SR-DTC-87-15) and should be submitted by December 9, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

Dated: November 9, 1987.

[FR Doc. 87-26619 Filed 11-17-87; 8:45 am]

BILLING CODE 8010-01-M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

November 13, 1987

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Dee Corporation, PLC
American Depositary Shares (File No. 7-0699)

High Income Advantage Trust
Shares of Beneficial Interests, $.01 Par Value (File No. 7-0700)

Borden Chemicals & Plastics Limited Partnership
Depositary Units (File No. 7-0701)

High Yield Income Fund, Inc. (The)
Common Stock, $.01 Par Value (File No. 7-0702)

MFS Income/Opportunity Trust
Shares of Beneficial Interest, No Par Value (File No. 7-0703)

PNC Financial Corp
Common Stock, $5.00 Par Value (File No. 7-0704)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 7, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-26620 Filed 11-17-87; 8:45 a.m.]

BILLING CODE 8010-01-M

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**[Release No. 34-25113; File No. SR-NSCC-87-10]**

## Self-Regulatory Organizations; Proposed Rule Change By National Securities Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 30, 1987 NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change would amend NSCC's Rules, and Procedures and Fee Structure as per Exhibit 1.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In May, 1987, NSCC filed a rule change with the Securities and Exchange Commission ("SEC") to operate the Reconfirmation and Pricing Service ("RECAPS") on a one-time pilot basis. RECAPS is a system used to reconfirm and reprice transactions that were originally compared but have not settled in a timely fashion, *i.e.*, fails. The initial application of RECAPS was to reconfirm and reprice fails in municipal securities for a limited group of participants. The purpose of this rule filing is to establish RECAPS as a permanent service of NSCC, along with adopting applicable fees.

The pilot application of RECAPS was conducted in June, 1987. NSCC considers the pilot to have been successful, with over 4,000 submissions to NSCC and over a 50% compared rate. (*See* letter dated July 13, 1987, from Michael Simon, Vice President and Associate General Counsel, NSCC, to Michael Macchiaroli, Assistant Director, Division of Market Regulation, SEC). In light of the success of the pilot, NSCC has determined to institute RECAPS as a permanent service of NSCC. RECAPS will be used for municipal, equity and other securities (such as zero coupon instruments) and will be available to all NSCC participants. NSCC will offer the RECAPS service on a periodic basis, as participants indicate a need in light of the number of their fails. Currently, it is anticipated that RECAPS will run no more often than quarterly.

The operation of RECAPS remains basically unchanged from the pilot. Members will submit RECAPS input on a day determined by NSCC, currently anticipated to be a Friday. On the following day (Saturday), the trade resolution procedure will occur for uncompared submissions. On the following day (Sunday), final contract sheets and settlement instruments will be issued.

The manner is which reconfirmed transactions are settled will depend on whether the underlying securities are eligible for NSCC's Continuous Net Settlement ("CNS") System. For CNS-eligible securities, the transactions will settle in the CNS System on a day specified by NSCC, most probably two days after settlement instructions are issued (Tuesday), with the difference between the contract price and current market price also settling on that day.[1] For non-CNS eligible securities the transaction will settle pursuant to balance orders or receive and deliver tickets issued by NSCC, with money differences settling at NSCC on the same day. As in the pilot, RECAPS will not be a guaranteed service of NSCC and NSCC, in its discretion, may reverse a credit given to a participant if the *contra* party to the repriced transaction fails to make the corresponding payment.

NSCC also is proposing RECAPS fees. The fees are $.25 per submission per CUSIP to price securities and $.50 per item submitted for recomparison. These fees are intended to cover NSCC's operating costs in offering the system.

Since the proposed rule change will help facilitate the resolution of fails, and thus will enhance the national clearance and settlement system, the rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Comments on the proposed rule change have not been solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to (File No. SR-NSCC-87-10) and should be submitted by December 9, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 10, 1987.

**Jonathan G. Katz,**

*Secretary.*

## Exhibit 1

**Note.**—Arrows indicate additions; Brackets indicate deletions.

1. Amend NSCC Rule 7 as follows:

Comparison Operation

Rule 7. SEC. 1. A Member may submit to the Corporation for comparison trade data on any transaction calling for delivery of Cleared Securities between it and another person. The Corporation will, in accordance with this Rule and the Procedures, handle the comparison of transactions reflected in trade data so submitted to it.

►In addition, in accordance with this Rule and the Procedures, a Member may submit to the Corporation for reconfirmation and repricing trade data

[1] Transactions reconfirmed through RECAPS will consist solely of transactions that originally did not settle in CNS; by its very nature there are no "fails" in CNS since open CNS positions are repriced daily in the System. For transactions that originally did not settle in the CNS system, however, but are CNS eligible at the time of RECAPS application, the settlement will occur in the CNS System.

with respect to transactions already compared.◄

* * * * *

2. Amend Section II of NSCC's Procedures as follows:

* * * * *

►G. Reconfirmation and Pricing Service The Reconfirmation and Pricing Service ("RECAPS") is a fail clearance system run periodically by the Corporation. The system will be run at such times, and for such securities, as the Corporation shall determine. The system provides an opportunity to reconfirm and reprice transactions that already have been compared.

Members may submit to the Corporation, at the time and in the manner established by NSCC, RECAPS fail information. (The day such information is submitted to the Corporation is referred to as "R," and subsequent calendar days are referred to as "R + 1," "R + 2," etc.) On R + 1, at the time and in the manner established by the Corporation, the Corporation will produce RECAPS Contracts containing standard contract categories (i.e., compared, uncompared and advisory columns). Upon receipt of the RECAPS Contracts, Members will have an opportunity for trade correction or resolution, including the acceptance of advisories. Also on R + 1, Members may submit As-Of trades. As-Of trades will be compared only if there is an exact match; no trade resolution process will be available.

On R + 2, NSCC will issue a second set of RECAPS Contracts, relfecting the additional input received on R + 1. Settlement information also will be distributed to Members on R + 2, depending on the system in which the reconfirmed transaction will settle:

(a) CNS—Reconfirmed fails in CNS Securities will be forwarded to CNS for settlement on a day specified by the Corporation. A CNS RECAPS Projection Report will be issued on R + 2 along with a RECAPS CNS Compared Trade Summary.

(b) Balance Orders—Reconfirmed fails in Balance Order Securities will be netted and allotted, and Balance Orders will be issued, on R + 2 for settlement on a day specified by the Corporation. A RECAPS Non-CNS Compared Trade Summary also will be issued on R + 2.

(c) Trade-for-Trade—For reconfirmed fails in securities not included in the CNS or Balance Order Systems, the Corporation will issue RECAPS Receive and Deliver instructions on R + 2 for settlement on a day specified by the Corporation. All trade-for-trade RECAPS transactions also will appear on the Non-CNS Compared Trade Summary.

In the event that the current market for a security price is not available, the trade will settle on a trade-for-trade basis as a "Special Trade," with the value on the RECAPS Receive and Deliver Instructions being the amount at which the trade previously was compared. For reconfirmed fails in debt securities, the current market price will include accrued interest from the previous interest payment date to the new settlement date. If a fail was open over an interest payment date, the two parties to the trade will be required to settle that interest payment outside RECAPS, although the parties could use the Corporation's Divided Settlement Service.

The RECAPS CNS Compared Trade Summary and the RECAPS Non-CNS Compared Trade Summary also will include the aggregate value of the original fails, the aggregate value of the Repriced RECAPS positions (i.e., the current market price of the reconfirmed trades) and the difference between the two, or the net cash adjustment. The net cash adjustment will settle the day the underlying RECAPS contract settles and will be included as part of the Member's daily money settlement with NSCC. RECAPS, however, will not be a guaranteed service of NSCC, so that if NSCC fails to receive payment from a Member, NSCC, in its discretion, may reverse in whole or part any credit previously given to any Member who is the contra side to a trade reconfirmed and repriced through RECAPS.

For the purposes of the Corporation's Buy-In Rules and Procedures, the Settlement Date for transactions reconfirmed through RECAPS, except for transactions in Municipal Securities, shall be considered to be the Settlement Date for the reconfirmed transaction. For Municipal Securities, the Settlement Date shall continue to be the original date of the fail unless provided otherwise by the rules of the Municipal Securities Rulemaking Board, and the buy-in rules of the Municipal Securities Rulemaking Board shall apply.◄

3. Amend NSCC's Fee Structure as follows:

1. TRADE COMPARISON AND RECORDING SERVICES FEES—represents fees to enter and correct original trade data.

* * * * *

►D. RECAPS

1. Submission for Pricing—$.25 per submission.

2. Sides submitted for Re-comparison—$.50 per side.◄

[FR Doc. 87-26617 Filed 11-17-87; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25105; File No. SR-PSE-87-14]**

## Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Pacific Stock Exchange, Incorporated ("PSE") submitted on April 28, 1987, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder. The proposed rule change would amend section 8(b) of PSE Rule XII ("Rule") to provide that for member to member controversies involving claims of $5,000 or less the panel of arbitrators hearing the claim will consist of one member, rather than three.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 24801, August 14, 1987) and by publication in the **Federal Register** (52 FR 32233).[1] No comments were received with respect to the proposed rule change.

Under section 8(b), the dollar amount involved in the member controversy determines the number of arbitrators that will hear a claim. Presently, all member controversies involving $500 or more require a three person arbitration panel to resolve the controversy. The Exchange proposes to increase the threshold dollar amount, required before the claim will be heard by a panel of three arbitrators, from $500 to $5,000. The net result of this change will be that an increased number of member controversies will be heard by one arbitrator rather than by three arbitrators.

The Exchange indicates in its filing that adoption of the amendment will reduce its costs in providing a forum for arbitrations by reducing the number of honoraria paid, as well as facilitate arbitration hearings scheduling.

The Commission believes that it is reasonable to increase the threshold

[1] In that release the Commission also approved on an accelerated basis, changes to various sections of PSE arbitration rules to bring them into conformity with the Uniform Code of Arbitration ("UCA"). *See*, Securities Exchange Act Release No. 24801, 52 FR 32233. The Commission decided not to approve the change to section 8(b) until it had been published for comment.

amount for member to member controversy to be heard by a three person arbitration panel. In this regard, we note that the proposed rule change should, as the PSE estimates, reduce the costs it incurs in providing arbitration facilities for members seeking to resolve disputes with other members, since such disputes, if less than $5,000, will be heard by a single arbitrator rather than by three arbitrators. In addition, although the proposed amendment to section 8(b) will reduce the number of arbitration panel members from three to one for disputes involving a dollar claim less than $5,000, the Commission nevertheless believes that PSE members submitting such claims to arbitration will receive fair hearings. Finally, in providing a forum for members to resolve disputes with other members, the proposed rule change should facilitate transactions in securities, promote just and equitable principles of trade and protect investors in accordance with section 6(b)(5) of the Act. The Commission therefore finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 9, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-26622 Filed 11-17-87; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-16122; 812-6880]**

## Alger Fund; Application

November 12, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* The Alger Fund ("Applicant").

*Relevant 1940 Act Section:* Exemption requested under section 6(c) from the provisions of section 22(d).

*Summary of Application:* Applicant seeks an order amending its prior order (Investment Company Act Release No. 15288, September 5, 1986) ("Prior Order") permitting a contingent deferred sales load ("CDSL") so as to permit an additional waiver of the CDSL.

*Filing Date:* The application was filed on September 29, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 7, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 75 Maiden Lane, New York, New York 10038.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Heaney, Financial Analyst (202) 272-2847 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

### Applicant's Representations

1. Applicant is an open-end, diversified, management investment company that was organized as a business trust under the laws of the Commonwealth of Massachusetts on March 20, 1986. Applicant's registration was declared effective by the SEC on November 7, 1986. Applicant is a series company that is currently composed of six series (collectively, the "Portfolios"). Shares of all of the Portfolios are distributed by Fred Alger & Company, Incorporated ("Alger Inc.") and Fred Alger Management, Inc. ("Alger Management") which is a wholly owned subsidiary of Alger Inc., which in turn is a wholly owned subsidiary of Alger Associates, Inc. ("Associates").

2. The Prior Order exempted Applicant from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rule 22c-1 under the 1940 Act to the extent necessary to permit Applicant to assess (waive and vary) a CDSL on redemptions of shares of certain of the Portfolios under certain conditions as described in that application (File No. 812-6378). The exemption included Applicant's initial and future series of shares, and any other registered investment company organized in the future that employees a subsidiary of Associates as investment adviser or principal underwriter.

3. Applicant desires to expand the circumstances under which it will waive the CDSL. Applicant proposes to waive the CDSL on redemptions by participants in qualified defined contribution plans where the participants are redeeming all or a portion of their shares that are invested in the Portfolios through defined contribution plans with respect to which a direct or indirect subsidiary of Associates provides certain non-fiduciary services to assist plan sponsors in the operation of the plans. Defined contribution plans, which include profit sharing, stock bonus, and money purchase pension plans, are plans under which the amount of the contributions made on behalf of participants is defined in some manner and are subject to section 401(a) of the Internal Revenue Code of 1986, which contains a list of requirements generally aimed at prohibiting discrimination in favor of highly compensated employees. Applicant requests that any exemption cover not only the Portfolios, but also any additional series or classes of shares Applicant offers the shares of the Portfolios.

### Applicant's Legal Analysis

1. Applicant believes that the purchase of shares of a Portfolio through a defined contribution plan involves little or no selling effort where (i) the plan is maintained for the benefit of numerous employees by an employer/sponsor and (ii) Applicant, by reason of a servicing relationship with the plan or its sponsor, can achieve economies of scale by communicating with plan participants in mass communications. In light of the lack of selling effort involved, Applicant believes it is appropriate to waive the CDSL on a redemption of Portfolio shares held in such a defined contribution plan.

2. Applicant submits that the proposed waiver is consistent with the policies underlying section 22(d) of the 1940 Act. Further, Applicant submits that the proposed waiver will not result in the occurrence of any of the abuses to which section 22(d) is directed and will not harm Applicant or its shareholders or unfairly discriminate among shareholders or purchasers.

### Applicant's Conditions

If the requested order is granted, Applicant expressly consents to be subject to the following conditions:

1. Applicant will comply with the provisions of Rule 22d–1 under the 1940 Act.

2. Applicant will comply with the provisions of Rule 11a–3 under the 1940 Act, if and when such rule is adopted, to the extent that the provisions of such rule are applicable to the arrangements Applicant has proposed.

3. Appliant will comply with Rule 12b–1 under the 1940 Act in its present form and as it may be revised in the future.

For the SEC, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–26614 Filed 11–17–87; 8:45 am]

**BILLING CODE 8010–01–M**

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**[Rel. No. IC–16121; 812–6842]**

## Chubb Investment Funds, Inc., et al., Application

November 12, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Approval under the Investment Company Act of 1940 (the "1940 Act").

*Applicants:* Chubb Investment Funds, Inc. ("Fund") and Chubb Securities Corporation ("Distributor").

*Relevant 1940 Act Section:* Approval requested under section 11(a).

*Summary of Application:* Applicants seek an approval to permit proposed exchanges of shares between the Fund's five separate investment portfolios, subject to a $5.00 service charge on each exchange. Applicants also request that such approval be made applicable to any future investment portfolios of the Fund which are operated in a manner substantially similar to the existing investment portfolios and for which the Distributor acts as principal underwriter ("Future Funds").

*Filing Date:* The application was filed on August 21, 1987, and amended on November 6, and November 10, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 4, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issue you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Michael O'Reilly, Chubb Investment Funds, Inc., One Granite Place, Concord, New Hampshire, 03301.

**FOR FURTHER INFORMATION CONTACT:** Victor R. Siclari, Staff Attorney (202) 272–2190 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

### Applicants' Representations

1. The Fund, a Maryland corporation, is registered under the 1940 Act as an open-end, diversified management investment company. The Fund is currently composed of five separate investment portfolios: the Chubb Money Market Fund, the Chubb Government Securities Fund, the Chubb Total Return Fund, the Chubb Tax-Exempt Fund and the Chubb Growth Fund (individually referred to as the "Fund" or collectively as the "Funds"). Each Fund is a distinct portfolio of investments having its own investment objectives and policies. A separate class of capital stock is issued for each of these Funds.

2. The Distributor will serve as the principal underwriter for each of the Funds and proposes to maintain a continuous public offering of Fund shares. Shares of the Chubb Government Securities Fund, the Chubb Total Return Fund, the Chubb Tax-Exempt Fund, and the Chubb Growth Fund will be offered at their respective net asset value plus a maximum sales charge of 5.0 percent of the offering price. Shares of the Chubb Money Market Fund will be sold at a constant net asset value of $1.00 per share without the deduction of a sales charge. In the case of each of the Funds offered with a sales charge, the maximum sales charge is subject to reduction based on, for example, the amount being invested as well as certain other factors such as rights of accumulation and letters of intent. It is anticipated that the Distributor may act as the principal underwriter for Future Funds, the shares of which may be sold at varying sales charges or on a no-load basis. Applicants request that the approval requested herein under section 11(a) of the 1940 Act apply to exchanges of shares of any of the existing Funds and of any Future Funds.

3. The Funds propose to pay directly for a portion of their distribution expenses pursuant to a plan of distribution adopted with respect to each Fund under Rule 12b–1 under the 1940 Act. Under the distribution plan, each Fund will pay the lesser of (a) actual distribution expenses incurred under such plan as determined by its board of directors, or (b) .50% per annum of the net asset value of the respective Fund or, with respect to the Chubb Money Market Fund, .25% per annum of the net asset value of that Fund.

4. It is proposed that shareholders of any of the Funds be permitted to exchange all or a portion of their shares (including shares acquired through reinvestment of dividends or capital gains distributions) for shares of any other Funds as follows. Shares of any Fund may be exchanged for shares of any other Fund with an equivalent, lower or no sales charge on the basis of the relative net asset value of the respective Fund shares at the time of the exchange. Shares of any Fund may be exchanged for shares of any other Fund with a higher sales charge on the basis of relative net asset value of the respective Fund shares at the time of the exchange, plus the payment of a "sales load differential," which is equal to the excess, if any, of the sales load that an investor would ordinarily have to pay when purchasing the security being acquired ("acquired security") over the sales load already paid on the security being exchanged ("exchanged security"). In calculating any sales load charge with respect to the acquired security, the sales charge previously paid with respect to the exchanged security will be aggregated with the sales charge paid on any securities previously exchanged for that exchanged security. In addition, where the exchanged security of any Fund was acquired through reinvestment of dividends or capital gains distributions, in calculating the sales load differential with respect to the acquired security, the exchanged security is deemed to have been sold with a sales load equal to that previously paid on the security on which the dividend was paid or distribution was made. If a shareholder is exchanging less than all shares held of a particular Fund, in calculating the sales load differential, the shares upon which the highest load was paid will be considered exchanged first.

5. Applicants propose to institute a reinvestment privilege (the "Reinvestment Privilege") to permit a shareholder who has held shares of any

of the Funds for at least six (6) months and who has redeemed shares or has had shares repurchased to reinvest in any of the Funds at their current net asset value, plus the payment of any sales load differential. The Reinvestment Privilege must be exercised within thirty (30) days of the redemption or repurchase proceeds. Rights of accumulation and other arrangements described in each Fund Prospectus and Statement of Additional Information allowing for reduced sales charges will be applied to determine the sales charge applicable to shares of a Fund being acquired by an exchange. The sales of Fund shares at prices that reflect scheduled variations in, or elimination of, the sales load will be done in compliance with Rule 22d-1 under the 1940 Act.

6. As disclosed in each Fund Prospectus, a service charge of $5.00 payable to Hampshire Funding, Inc., the Fund transfer agent, will be uniformly applied on each exchange of shares between the Funds and on the exercise of the Reinvestment Privilege.

**Applicants' Legal Conclusions**

1. Applicants submit that the proposed exchange offers and Reinvestment Privileges are fair and equitable to all shareholders of all the Funds while at the same time giving such shareholders flexibility in their financial planning, and the proposed exchange offers and Reinvestment Privilege fall within the relevant conditions specified in proposed Rule 11a-3 under the 1940 Act.

2. Applicants also submit that there is not sufficient financial incentive for a sales representative to initiate such exchanges for his or her own benefit. This results from the fact that when a shareholder is charged a sales load differential, the commission to the sales representative is less than it would have been on a direct purchase of the shares being acquired. Applicants represent that the Distributor has established sufficient internal monitoring and review procedures to ensure that such exchanges are made at the request of the shareholder and not for the sales representative's personal gain.

3. In addition, Applicants submit that the $5.00 service fee is fair since it will be uniformly applied to all shareholders of all the Funds and is designed to defray the expense of facilitating the exchanges.

**Applicants' Conditions**

If the request order is granted, Applicants agree to the following condition:

1. Applicants will comply with the provisions of proposed Rule 11a-3 (or any similar rule) under the 1940 Act if and when it is adopted by the SEC.

For the SEC, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-26615 Filed 11-17-87; 8:45 am]

BILLING CODE 8010-01-M

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**[File No. 22-17683]**

## Application and Opportunity for Hearing: Citicorp

November 10, 1987.

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of United States Trust Company of New York (the "Trust Company") under four existing indentures and two Pooling and Servicing Agreements, each dated as of August 1, 1987, under each of which certificates evidencing interests in a pool of mortgage loans have been issued, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as trustee under any of such indentures or the Agreements. Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which securities of the same obligor upon the indenture securities are outstanding.

The Applicant alleges that:

(1) The Trust Company currently is acting as trustee under four indentures under which Applicant is the obligor. The indenture dated February 15, 1972, involved the issuance of floating rate notes due 1989; the indenture dated March 15, 1977, involved the issuance of various series of unsecured and unsubordinated notes; the indenture dated August 25, 1977, involved the issuance of rising-rate notes, Series A; and the indenture dated April 21, 1980, involved the issuance of various series of unsecured and unsubordinated Notes. Said indentures were filed as, respectively, Exhibits 4(a), 2(b), 2(b), and 2(a) to Applicant's respective Registration Statement Nos. 2-42915, 2-58355, 2-59396 and 2-64862 filed under the Securities Act of 1933 (the "1933 Act"), and have been qualified under the Act. The four indentures are hereinafter called the "Indentures" and the securities issued pursuant to the Indentures are hereinafter called the "Notes."

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On August 17, 1987, the Trust Company entered into a Pooling and Servicing Agreement dated as of August 1, 1987 (the "1987-14 Agreement"), with Citicorp Mortgage Securities, Inc. ("CSMI"), Packager and Servicer, under which there were issued on August 17, 1987, Mortgage Pass-Through CitiCertificates, Series 1987-14 9.50% Pass-Through Rate (the "Series 1987-14 Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1987-14 Mortgage Pool") originated by Citibank, N.A. and having adjusted principal balances aggregating $77,673,143.37 at the close of business on August 1, 1987, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1987-14 Certificates. On August 17, 1987, Applicant, the parent of CMSI, entered into a guaranty of even date (the "1987-14 Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1987-14 Certificates, to be liable for 5.25% of the initial aggregate principal balance of the 1987-14 Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1987-14 Guaranty. The 1987-14 Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1987-14 Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1987-14 Certificates were registered under the 1933 Act (registration statement on Forms S-11 and S-3, File No. 33-12788) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through CitiCertificates pursuant to Rule 415 under the 1933 Act. The Series 1987-14 Certificates were offered by a Prospectus Supplement dated July 27, 1987, supplemental to a Prospectus dated June 10, 1987. The

1987–14 Agreement has not been qualified under the Act.

(4) On August 17, 1987 the Trust Company entered into a Pooling and Servicing Agreement dated as of August 1, 1987 (the "1987–13A Agreement") with Citibank N.A., Packager and Servicer, and CMSI, under which there were issued on August 27, 1987 Mortgage Pass–Through CitiCertificates, Series 1987–13A 10% Pass-Through Rate (the "Series 1987–13A Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1987–13A Mortgage Pool") originated by Citibank, N.A., and having adjusted principal balances aggregating $250,048,222.70 at the close of business on August 1, 1987 which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1987–13A Certificates. On August 27, 1987, Applicant, entered into a guaranty of even date (the "1987–13A Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1987–11 Certificates, to be liable for 6.75% of the initial aggregate principal balance of the 1987–13A Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1987–13A Guaranty. The 1987–13A Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1987–13A Guaranty would rank on a parity with the obligations evidenced by the Notes.

The Series 1987–13A Certificates were registered under the 1933 Act (Registration Statement on Forms S–11 and S–3, File No. 33–12788) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through CitiCertificates pursuant to Rule 415 under the 1933 Act. The 1987–13A Agreement has not been qualified under the Act.

The 1987–14 Agreement and the 1987–13A Agreement are hereinafter called the 1987 Agreements and the 1987–14 Guaranty and the 1987–13A Guaranty are hereinafter called the 1987 Guarantees.

(5) The obligations of Applicant under the Indentures and the 1987 Guarantees are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1987 Guarantees are unlikely to cause any conflict of interest in the trusteeships of the Trust Company under the Indentures and 1987 Agreements.

(6) The Applicant has waived notice of hearing, hearing, and any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matter of fact and law asserted, all persons are referred to said application, File No. 22–17683, which is a public document on file in the office of Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC.

Notice is further given that any interested person may, not later than December 2, 1987, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application that he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549.

At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–26542 Filed 11–17–87; 8:45 am]

**BILLING CODE 8010–01–M**

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**[Rel. No. IC–16123; 812–6830]**

## Royal Trust Corporation of Canada; Application

November 12, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

*Applicant:* Royal Trust Corporation of Canada.

*Relevant 1940 Act Sections:* Exemption requested pursuant to section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Royal Trust Corporation of Canada ("Applicant") seeks an order exempting it from all provisions of the 1940 Act to enable it to issue and sell its debt securities in the United States without registering as an investment company under the 1940 Act.

*Filing Date:* The application was filed on August 12, 1987 and amended on October 28, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 7, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Royal Trust Corporation of Canada, c/o Hamilton Potter, Jr., Esq., Sullivan & Cromwell, 125 Broad Street, New York, NY 10004.

**FOR FURTHER INFORMATION CONTACT:** Cecilia C. Kalish, Staff Attorney (202) 272–3037, or Curtis R. Hilliard, Special Counsel (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

### Applicant's Representations

1. Applicant states that it is one of the largest trust companies in Canada and is the principal Canadian operating subsidiary of Royal Trustco Limited ("Royal Trustco"). At December 31, 1986, Applicant's total assets amounted to approximately $6.69 billion, total demand and term deposits and borrowings amounted to approximately $6.37 billion and total equity capital amounted to approximately $237 million. Applicant presently has 95 branch offices throughout Canada (other than in the Province of Quebec).

2. Applicant provides a broad range of financial, trust and investment services. These services include checking and savings accounts, personal, corporate and mortgage loans, mutual fund and other investment products including advice and administration, estate administration, corporate and pension trust services, private and merchant banking, financial trust services and international asset management. Applicant also provides deposit-taking services at all its 95 branches and is

authorized to accept deposits required by legislation to be treated as trust funds with the related assets being segregated from Applicant's own capital and assets. Funds obtained from these deposits plus other liabilities and capital are invested in a variety of assets which by categories at December 31, 1986 were as follows: Cash and short term deposits 4%, marketable securities 9%, mortgage loans 72%, and other loans and investments 15%.

3. Applicant lends funds to corporations in many business sectors including transportation, manufacturing, energy, real estate development and Canadian federal and provincial governments and their agencies. At December 31, 1986, investment in such loans amounted to $0.7 billion. Applicant also had $0.3 billion in personal installment loans, credit card advances and loans to individuals other than mortgages, as of December 31, 1986. In addition to its investment in mortgages and other loans, Applicant also invests in securities, including government and corporate bonds and preferred and common shares of Canadian issuers. The market value of these securities at December 31, 1986 was $611 million (cost $604 million). Applicant also offers a complete range of trust services to individual and corporate clients.

4. Applicant is regulated by Canadian federal and provincial authorities under a structure which Applicant believes is generally comparable in scope to that applicable to United States banks. The Trust Companies Act (Canada) provides a comprehensive regulatory scheme governing all aspects of the business of licensed trust companies, with detailed regulations as to the types of investments and loans they may make, auditing requirements, the maintenance of reserves, financial disclosure statements, capitalization and regular inspection by the Superintendent, an official of the Department of Finance of the Government of Canada. The Trust Companies Act also has the effect of prescribing a maximum ratio of deposits (savings and checking accounts and guaranteed investment certificates) and other borrowings to capital and reserves, which for Applicant is presently an authorized multiple of 25 times. Some provincial legislation imposes similar requirements. Federal and certain provincial legislation imposes liquidity requirements, specifies the types of assets in which funds must generally be invested and limits the amount which may be invested in certain categories of assets such as real estate, common shares and securities of a single issuer.

5. The Canada Deposit Insurance Act provides a statutory scheme for the insurance of qualifying deposits made and payable in Canada in Canadian currency. Applicant is a member of the Canada Deposit Insurance Corporation ("CDIC"). Legislation recently passed by the Parliament in Canada consolidates the structure of the supervisory authorities and creates a new Office of the Superintendent of Financial Institutions. It also prescribes broader powers of the CDIC for the carrying out of the examination of institutions and detailed rules for the revoking of deposit insurance coverage. Other legislation recently passed by Parliament broadens the supervisory powers of federal regulators and permits financial institutions to own securities dealers.

6. Applicant obtains its funds in a variety of ways, including acceptance of deposits and borrowing. Applicant believes that access to the United States capital markets would provide valuable additional sources of funds, and accordingly seeks the ability to issue and sell in the United States, either publicly or privately, medium- and long-term debt securities and commercial paper in the form of Guaranteed Investment Certificates ("GIC's").

7. Applicant contemplates the sale in the United States of prime quality commercial paper notes of up to $250 million in the form of short-term GIC's (the "Notes") in bearer form and in denominations of at least $100,000 in reliance upon the Order sought hereby. Such Notes, which would be treated as deposit liabilities for regulatory purposes under the Trust Companies Act, would rank *pari passu* among themselves and with other deposit liabilities of Applicant and would rank senior to other liabilities and capital of Applicant. The Notes would be issued and sold through one or more United States commercial paper dealers which would reoffer the Notes as principals to institutional investors and other entities and individuals who normally purchase commercial paper notes in the United States, without advertisement or offer for sale to the general public. Applicant undertakes to require that each dealer provide each offeree, prior to sale or issuance of the Notes, with a memorandum at least as comprehensive as those customarily prepared in connection with offers and sales in the United States of prime grade commercial paper of foreign issuers. This memorandum would be updated periodically to reflect material changes in Applicant's financial status. Applicant may appoint a bank or other financial institution in the United States as its authorized agent to issue its Notes from time to time.

8. The terms of the Notes, including their negotiability, maturity and minimum denomination, the amount outstanding at any given time and the manner of offering them to investors would be such as to qualify them for the exemption from registration provided by section 3(a)(3) of the 1933 Act. The Notes would be prime quality, negotiable commercial paper of a type eligible for discount by Federal Reserve Banks and would arise out of, or the proceeds of which would be used for, current transactions. Applicant would agree with its commercial paper dealer that the Notes would contain no provision for payment on demand, extension, renewal or automatic rollover at the option of either Royal Trust or the holder. Applicant further states that it would not issue or sell the Notes without obtaining an opinion of its United States counsel that the notes would be entitled to the exemption from registration provided by section 3(a)(3). Applicant does not request Commission review or approval of such opinion letter and the Commission expresses no opinion as to the availability of such exemption. Applicant may appoint a bank or other financial institution in the United States as its authorized agent to issue its notes from time to time.

9. Applicant further contemplates a private placement in the United States of medium-term notes of up to $250 million in the form of GIC's (the "Medium-Term Notes") in denominations of at least $250,000. Such Medium-Term Notes, which would be treated as Deposit liabilities for regulatory purposes under the Trust Companies Act, would rank *pari passu* among themselves and with other deposit liabilities of Applicant and would rank senior to other liabilities and capital of Applicant.

10. Applicant undertakes that any placement of any Medium-Term Notes in the United States under circumstances not requiring registration under the 1933 Act would meet the prevailing standards for an exemption from registration under the 1933 Act. Applicant further undertakes that it would not effect such placement without obtaining an opinion of United States Counsel that such placement would be exempt from the registration requirements of the 1933 Act. Applicant does not request Commission review or approval of such opinion letter and the Commission expresses no opinion as to the availability of such exemption. In

connection with such offering, Applicant undertakes to deliver a placement memorandum which would contain disclosure at least as comprehensive as that customarily made by foreign issuers making such placement in the United States.

11. Applicant also seeks the ability, from time to time, to publicly offer other debt securities in the United States. Any such offering would be registered under the Securities Act of 1933 (the "1933 Act"). In connection with any such offering, Applicant would file with the Securities and Exchange Commission a registration statement with respect to the offered securities, and would comply with the prospectus disclosure and delivery requirements of the 1933 Act. Disclosure contained in the prospectus would be at least as comprehensive as that customarily made in connection with registered public offerings of debt securities in the United States.

12. Applicant undertakes that any prospectus of private placement memorandum relating to offerings of the types described above would contain a description of Applicant's business and would be provided to prospective investors prior to any sale of securities in connection with the offering. It would also contain Applicant's most recently published financial statements audited by a firm of independent public accountants of recognized international standing. Any such prospectus or memorandum would disclose any material differences between the accounting principles applied in the preparation of Applicant's financial statements and generally accepted accounting principles applicable to United States banks. In the event of a material change to Applicant's financial condition, any such prospectus of memorandum would be revised to disclose such change.

13. Applicant agrees that all future issues of medium- or long-term debt securities and commercial paper in the United States shall have received prior to issuance one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization; provided, however, that no such rating need be obtained with respect to any such issuer if, in the opinion of counsel, such counsel having taken into account for the purposes thereof the doctrine of "integration," an exemption from registration is available under section 4(2) of the 1933 Act

14. Applicant undertakes to submit expressly to the jurisdiction of the federal and New York State courts sitting in the City of New York for the purpose of any suit, action or proceeding arising out of any offering conducted in reliance upon any order made pursuant hereto or in connection with the securities distributed thereby. Applicant further undertakes that in connection with any such offering it would appoint an agent in the City of New York to accept service of process. Consent to jurisdiction and appointment of an agent for service of process would be irrevocable for so long as any of Applicant's securities issued in reliance upon any order made pursuant hereto remained outstanding in the United States. Submission to jurisdiction and appointment of agent for service of process would not affect the right of any holder of such securities to bring suit in any court having jurisdiction over Applicant by virtue of the offer and sale of the securities or otherwise. The agent for service of process would not be a trustee for the holders of the securities or have any responsibilities or duties to act for such holders.

15. Applicant states that it would issue securities in the United States for only so long as it is supervised and examined by governmental authorities in Canada having the power of supervision over trust companies in that country. Royal Trust represents that it has no present intention to curtail its financial operations in Canada so as to cease to be regulated as a trust company in Canada.

**Applicant's Conditions**

Applicant agrees that if the requested order is granted, such order will be expressly conditioned on Applicant's compliance with the undertakings set forth above.

For the Commission, by the Division of Investment Management, under delegated authority.

[FR Doc. 87-26616 Filed 11-17-87; 8:45 am]
BILLING CODE 8010-01-M

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**[Release No. 35-24501]**

## Filings Under Public Utility Holding Company Act of 1935 ("Act")

November 12, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 7, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**New England Electric System, et al. [70-7432]**

New England Hydro-Transmission Electric Company, Inc. ("NEH-M"), New England Hydro-Transmission Corporation ("NEH-NH"), New England Power Company ("NEP"), and their parent New England Electric System ("NEES"), a registered holding company, all in care of New England Power Service Company, 25 Research Drive, Westborough, Massachusetts 01582; and Montaup Electric Company ("Montaup"), an indirect subsidiary of Eastern Utilities Associates, a registered holding company, in care of Eastern Utilities Associates, P.O. Box 2333, Boston, Massachusetts 02107; and The Connecticut Light and Power Company ("CL&P"), Western Massachusetts Electric Company ("WMECO"), Holyoke Water Power Company ("HWP"), Holyoke Power and Electric Company ("HP&E"), and their parent Northeast Utilities ("NU"), a registered holding company, all in care of Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut 06141-0270 ("collectively, the "Applicants"), have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and Rules 45 and 46 thereunder.

In March 1983, participating members of the New England Power Pool ("Participants"), including the operating company Applicants (NEP, Montaup, CL&P, WMECO, HWP and HP&L herein), entered into a firm energy agreement ("Phase I") with Hydro-Quebec, the provincial utility of Quebec, Canada, to purchase 33 million megawatt hours ("MWh") of surplus hydroelectric engery in an eleven year period beginning in 1986, at a price

discounted from displaced energy costs. The Phase I Interconnection, placed in service to deliver this energy in October 1986, consists of a high voltage direct current ("HVDC") transmission interconnection with a transfer capability of 690 megawatts ("MW"). By a second agreement ("Phase II"), Participants undertook an expansion of the transfer capability of the interconnection to 2000 MW, requiring construction of new facilities at an estimated total cost of $547 million, and became entitled to purchase an additional 70 million MWh of energy at the same price.

By prior Commission order, NEES was authorized to organize NEH–M and NEH–NH, wholly owned subisidiaries, to enter into, among others, credit-support agreements with Participants (NEP, CL&P, WMECO, HWP, HP&E, and Montaup herein), to provide for the construction, financing, and operation of the Phase II HVDC facilities in Massachusetts and New Hampshire, respectively; and equity funding agreements to provide equity capital and additional credit support (HCAR No. 24315, February 9, 1987). The Applicants seek Commission approval of portions of these credit-support and capital-funding agreements so that NEH–M and NEH–NH can make preliminary arrangements for financing Phase II construction. In particular, they seek approval for certain credit commitments to be made by NEP, CL&P, WMECO, HWP, HP&E, and Montaup, and for credit commitment guarantees by NEES, NU, and Montaup, both in support of borrowings made by NEH–M and NEH–NH; for the issuance, sale and subsequent reacquisition of common stock by NEH–M and NEH–NH; the acquisition of common stock by NEES, NU and Montaup; and the payment of dividends from capital on such stock. A discussion of the agreements, or portions thereof, requiring Commission approval follows.

The Participants in Phase II have executed, subject to regulatory and corporate approvals, a number of contracts that set forth their mutual rights and obligations in connection with the project. NEP, Montaup, CL&P, WMECO, HWP, and HP&E are among the Participants. Under two of these support agreements, the Phase II Massachusetts Transmission Facilities Support Agreement and the Phase II New Hampshire Transmission Facilities Support Agreement, each Phase II Participant proposes to commit to pay from time to time any cash deficiency experienced by NEH–M and NEH–NH, which is attributable to it. A "cash deficiency" attributed to a Participant is defined as its proportional share of the total shortfall of funds available to NEH–M or NEH–NH under the support agreements to pay the principal, including premiums, and the interest on any funds borrowed by these companies. The cash deficiency payment is to be paid directly on demand to NEH–M's and NEH–NH's lenders.

The Equity Funding Agreements between NEH–M and NEH–NH and certain New England utilities or their parent companies provide, among other things, that the equity position of NEH–M and NEH–NH will be maintained at 40% of total capital; that NEES will own 515 of each company's common stock; that the remaining 49% of each will be owned by the other equity owners (NU and Montaup herein) whose credit rating are investment grade ("Equity Sponsors") and in proportion to their participation, directly or indirectly, under the various Phase II support agreements; and that additional credit support be furnished for the project. Such credit support requries each Equity Sponsor to guarantee to pay its then equity share of any cash deficiency, up to 35% of the total deficiency, experienced by NEH–M or NEH–NH and not paid by a Credit Enhanced Participant, as defined in the support agreements, above.

In terms of actual aggregate investment, the Equity Funding Agreements commit each Equity Sponsor to contribute its share of up to $140 million of equity to NEH–M and up to $90 million of equity to NEH–NH. This equity may be in the form of common stock purchases and/or capital contributions. In order to maintain a capital structure of 40% equity during the life of the Phase II project, the Equity Funding Agreements provide that equity funds will be returned to Equity Sponsors as debt is retired.

Finally, the Restated Use Agreement ("Use Agreement") among the Participants provides for their rights to use Phase II facilities to receive energy from Hydro-Quebec, and to share in savings which may accrue. Under the Use Agreement, Participants (NEP, Montaup, CL&P, WMECO, HWP and HP&L, herein) also guarantee to pay Hydro-Quebec, through NEPOOL, their share of energy payment deficiencies under the Firm Energy Contract caused by a failure of one or more Participants to make its payment(s).

**Central and Southwest Corporation [70–7434]**

Central and Southwest Corporation ("CSW"), 2400 San Jacinto Tower, Dallas, Texas 75201, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(c)(3) and 12 of the Act and Rules 45 and 50 thereunder.

By orders dated January 22, 1985 (HCAR No. 23578) and March 4, 1986 (HCAR No. 24040), CSW and its nonutility subsidiary, CSW Financial, Inc. ("Financial"), were authorized to form a joint venture ("Leasco") with Manufacturers Hanover Leasing Corporation for the pupose of engaging in leverage leasing of property, other than electric utility facilities. CSW and Financial were further authorized through December 31, 1987 to invest up to $200 million in Leasco. CSW now seeks authorization to invest up to $200 million in Leasco through December 31, 1988.

**National Fuel Gas Company; Seneca Resources Corporation [70–7436]**

National Fuel Gas Company ("National Fuel"), 30 Rockefeller Plaza, Suite 4545, New York, New York 10112, a registered holding company, and its wholly owned nonutility subsidiary, Seneca Resources Corporation ("Seneca"), 10 Lafayette Square, Buffalo, New York 14203, a company engaged, among other things, in an oil and gas exploration and development program, have filed a declaration pursuant to sections 6(a), 7 and 12(b) of the Act and Rule 45 thereunder.

Seneca's Houston Division is presently engaged in a joint venture with a group headed by Cashco Oil Company ("Joint Venture") to develop certain offshore oil and gas leases. The drilling of development wells is financed by short-term borrowings, guaranteed by National Fuel, under Seneca's lines of credit with RepublicBank Houston, National Association (presently First RepublicBank Houston, N.A.) and Citibank, N.A. As of October 15, 1987, $15,750,000 was outstanding under the lines of credit. The companies now request authorization for the period from December 29, 1987 to December 27, 1989 (i) for Seneca, on behalf of the Joint Venture, to renew the bank lines of credit, to borrow an aggregate principal amount of up to $18 million, and to guarantee the repayment of all amounts so borrowed, and (ii) for National Fuel to guarantee Seneca's obligations to the banks and repayment of amounts borrowed on behalf of the Joint Venture under the line of credit.

**National Fuel Gas Company, et al. [70–7438]**

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New

York, New York 10112, a registered holding company, and its subsidiaries, National Fuel Gas Distribution Corporation ("Distribution"), National Fuel Gas Supply Corporation ("Supply"), Penn-York Energy Corporation ("Penn-York"), Empire Exploration, Inc. ("Empire") and Highland Land & Minerals, Inc. ("Highland"), each located at 10 Lafayette Square, Buffalo, New York 14203, Seneca Resources Corporation ("Seneca"), Capital Bank Plaza, 333 Clay Street, Suite 4150, Houston, Texas 77002, and Utility Constructors, Inc. ("UCI"), East Erie Extension, Linesville, Pennsylvania (collectively, "Subsidiary Companies"), have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Act and Rules 43, 45, and 50(a)(5) thereunder.

By orders dated December 30, 1985 (HCAR No. 23193), February 12, 1985 (HCAR No. 23598), December 20, 1985 (HCAR No. 23958) and August 3, 1987 (HCAR No. 24435), National and its Subsidiary Companies, were authorized, in relevant part, to participate in the National system money pool ("Money Pool") through December 31, 1987. National and its Subsidiary Companies now propose to continue their participation in the Money Pool, to be administered by National, through December 31, 1989. Total outstanding short-term borrowings through the Money Pool will not exceed $200, $125, $140, $35, $35, $5 and $5 million respectively, for Distribution, Supply, Seneca, Empire, Penn-York, UCI, and Highland.

National also seeks to establish external short-term lines of credit in an amount of up to $10 million through December 31, 1989, the proceeds of which will be used for National's corporate purposes. In addition, National seeks to issue and sell from time-to-time through December 31, 1989, up to $100 million aggregate principal amount at any one time outstanding of commercial paper, pursuant to an exception from competitive bidding, and/or short-term unsecured notes to banks under bank lines of credit, the proceeds of which would be made available to its Subsidiary Companies through the Money Pool.

**New Orleans Public Service Inc. [70-7454]**

New Orleans Public Service Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a wholly owned electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 thereunder.

In order to satisfy the percentage ownership interests specified in an Agreement for Joint Use of Poles dated August 10, 1982, as amended, between NOPSI and South Central Bell Telephone Company ("Bell"), NOPSI proposes to sell to Bell 1,311 40-foot wood poles in place, for a price of $200,663.13.

**Arkansas Power & Light Company [70-7458]**

Arkansas Power & Light Company ("AP&L"), P.O. Box 51, Little Rock, Arkansas 72203, an electric utility subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act.

AP&L proposes to amend Article FIFTH of its Agreement of Consolidation or Mergler ("Charter") to provide for the reduction of the par value of its common stock from $12.50 per share to $.01 per share. Because franchise taxes are based on the par value of outstanding shares of common stock, AP&L has determined that substantial franchise tax savings can be effected by such reduction. Middle South, as the sole owner of all of the outstanding shares of AP&L's common stock, is the only security holder whose rights will be affected by the proposed transaction. Middle South has indicated to AP&L that it will consent to the proposed amendment reducing the par value of AP&L's common stock, and will waive any notice of any special shareholder meeting to which it may be entitled.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-26621 Filed 11-17-87; 8:45 am]

BILLING CODE 8010-01-M

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**[File No. 22-17474]**

## Application and Opportunity for Hearing; Union Tank Car Co.

November 12, 1987.

Notice is hereby given that Union Tank Car Company ("Applicant") has filed an Application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 ("Act") for a finding by the Securities and Exchange Commission ("Commission") that the trusteeship of First National Bank of Chicago ("FNBC") under six indentures of the Applicant, two of which were heretofore qualified under the Act, and the proposed trusteeship of FNBC under a new indenture, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify FNBC from acting as trustee under any of such indentures.

Section 310(b) of the Act provides, in pertinent part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, that with certain exceptions, a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of said Subsection (1), there shall be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

1. The Applicant has outstanding 7⅝% Sinking fund Equipment Trust Certificates due April 1, 1989 ("7⅝% Certificates") issued under an Indenture dated April 1, 1969 ("Series 4 Indenture"), between the Applicant and FNBC, as Successor Trustee to the Northern Trust Company, which Series 4 Indenture was heretofore qualified under the Act. The 7⅝% Certificates were registered under the Securities Act of 1933 ("1933 Act").

2. The Applicant has outstanding 9.80% Sinking Fund Equipment Trust Certificates due June 1, 1999 ("9.80% Certificates") issued under an Indenture dated as of June 1, 1979 ("Series 16 Indenture") between the Applicant and FNBC, as Successor Trustee to Wells Fargo Bank, N.A., which Series 16 Indenture was heretofore qualified under the Act. The 9.80% Certificates were registered under the 1933 Act.

3. The Applicant has outstanding 10½% First Mortgage Sinking Fund Equipment Notes due September 15, 1994 ("10½% Notes") issued under an Indenture dated as of September 15, 1974 ("Series C-1 Indenture") between the Applicant and FNBC, as Trustee, which Series C-1 Indenture was not

heretofore qualified under the Act. The 10½% Notes were exempt from registration under the 1933 Act.

4. The Applicant has outstanding 8⅝% Equipment Trust Certificates due October 15, 1989 ("8⅝% Certificates") issued under an indenture dated as of April 1, 1974 ("Series P–1 Indenture"), between the Applicant and FNBC, as Trustee, which Series P–1 Indenture was not heretofore qualified under the Act. The 8⅝% Certificates were exempt from registration under the 1933 Act.

5. The Applicant has outstanding 9.60% Sinking Fund Equipment Trust Certificates due December 15, 1998 ("9.60% Certificates") issued under an Indenture dated as of December 1, 1978 ("Series P–2 Indenture"), between the Applicant and FNBC, as Successor Trustee to the Northern Trust Company, which Series P–2 Indenture was not heretofore qualified under the Act. The 9.60% Certificates were exempt from registration under the 1933 Act.

6. The Applicant has outstanding 13% Equipment Trust Certificates due May 1, 2000 ("13% Certificates") issued under an Indenture dated as of April 15, 1985 ("Series P–4 Indenture"), between the Applicant and FNBC, as Trustee, which Series P–4 Indenture was not heretofore qualified under the Act. The 13% Certificates were exempt from registration under the 1933 Act.

7. The Applicant has outstanding 9.90% Equipment Trust Certificates due October 1, 2002 ("9.90% Certificates") issued under an Indenture dated as of October 1, 1987 ("Series P–7 Indenture"), between the Applicant and FNBC, as Trustee, which Indenture was not heretofore qualified under the Act. The 9.90% Certificates were exempt from registration under the Act.

8. The Applicant alleges that the Equipment Trust Certificates issued under the Series, 4, 16, C–1, P–1, P–2, P–4 and P–7 Indentures (hereinafter, collectively, "Indentures") are secured by a separate group of specifically identified railroad cars. Each set of Equipment Trust Certificates is ranked *pari passu inter se*. Therefore, should FNBC have the occasion to proceed against the security of any one of these Equipment Trust Certificates, such action would not affect the security, or the use of any security, under the other Equipment Trusts. Further, the Applicant alleges that the Series P–7 Indenture is similar in all material respects to its other Indentures, except for inherent differences as to amounts, dates, interest rates, and certain other related figures, and except for certain other minor changes such as would normally be expected in a series of issues, none of which, in the Applicant's opinion, could give rise to a conflict of interest in the Trustee. The Applicant is not in default under any of its Equipment Trust obligations.

9. In the opinion of the Applicant, the provisions of the Indentures are not so likely to involve a material conflict of interest so as to make it necessary in the public interest or for the protection of any holder of any of the Equipment Trust Certificates issued under the Indentures to disqualify FNBC from acting as Trustee under any of the Indentures.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by this Application, and all rights to specify procedures under the Rules of Practice of the Commission with respect to its Application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said Application, File No. 22–17474, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than December 9, 1987, submit to the Commission his views or any substantial facts bearing on this Application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for the request, and the issues of fact and law raised by the Application which he wishes to controvert. Persons who request the hearing or advice as to whether the hearing is ordered will receive all notices and orders issued in this matter, including the date of hearing (if ordered) and any postponements thereof. At any time after such date, an order granting the Application may be issued upon such request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–26618 Filed 11–17–87; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area #2294]**

### Commonwealth of the Northern Mariana Islands; Declaration of Disaster Loan Area

The Island of Saipan in the Commonwealth of the Northern Mariana Islands constitutes a disaster loan area because of damage from Typhoon Lynn which occurred October 18–19, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on January 14, 1988, and for economic injury until the close of business on August 15, 1988, at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, California 95853, or other locally announced locations.

The interest rates are:

| | *Percent* |
|---|---|
| Homeowners With Credit Available Elsewhere | 8.000 |
| Homeowners Without Credit Available Elsewhere | 4.000 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Businesses Without Credit Available Elsewhere | 4.000 |
| Businesses (EIDL) Without Credit Available Elsewhere | 4.000 |
| Other (Non-Profit Organizations Including Charitable and Religious Organizations) | 9.000 |

The number assigned to this disaster is 229406 for physical damage and for economic injury the number is 657100.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: November 13, 1987.

**James Abdnor,**

*Administrator.*

[FR Doc. 87–26639 Filed 11–17–87; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF STATE

**[Public Notice CM–8/1133]**

### Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea Working Group on Fire Protection; Meeting

The U.S. Safety of Life at Sea (SOLAS) Working Group on Fire Protection will conduct an open meeting on Monday, December 14, 1987, at 9:30 in Room 2415 of the Coast Guard Headquarters Building, 2100 Second Street, SW. Washington, DC 20593.

The purpose of this meeting will be to discuss plans for the 33rd session of the International Maritime Organization (IMO) Subcommittee on Fire Protection, February 15–19, 1988, including: Fire test procedures, inert gas system guidelines, devices to prevent the passage of flame, materials other than steel for pipes, fire protection systems for passenger ship safety, below deck openings to cargo tanks, ventilation requirements of vehicle decks on ro-ro ships during loading and unloading, review of MODU Code, and other miscellaneous subjects.

Members of the public may attend up to the seating capacity of the room. For information contact: Ms. Marjorie Murtagh, U.S. Coast Guard (G–MTH–4), 2100 Second Street SW., Washington, DC 20593–0001; Telephone: (202)267–2997.

Dated: November 4, 1987.

**Richard C. Scissors,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 87–26520 Filed 11–17–87; 8:45 am]

BILLING CODE 4710–07–M

## DEPARTMENT OF TRANSPORTATION

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 13, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answer, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedins.

**Docket No. 45231**

*Date Filed:* October 22, 1987.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* November 19, 1987.

*Description:* Application of United States Air Lines, Inc., pursuant to section 401(e)(7)(B) of the Act and Subpart Q of the Regulations, applies for the removal of condition 8 to its certificate of public convenience and necessity for Route 130, which authorizes service between the United States and the Pacific and Asia. Condition 8 to that certificate prohibits United from operating single-plane passenger service between Japan and Washington, DC, Chicago, or Dallas-Fort Worth.

**Docket No. 45275**

*Date Filed:* November 10, 1987.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* December 8, 1987.

*Description:* Application of Maersk Air I/S, pursuant to section 402 of the Act and Subpart Q of the Regulations, applies for renewal of its foreign air carrier permit authorizing it to engage in charter foreign air transportation between any point or points in Denmark, Norway, and Sweden and any point or points in the United States.

**Docket No. 45276**

*Date Filed:* November 10, 1987.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* December 8, 1987.

*Description:* Application of Sterling Airways A/S, pursuant to section 402 of the Act and Subpart Q of the Regulations, requests renewal of its authority to engage in charter foreign air transportation of persons and/or property, separately or in combination: Between any point or points in Denmark, Norway or Sweden and any point or points in the United States.

**Docket No. 45279**

*Date Filed:* November 13, 1987.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* December 11, 1987.

*Description:* Application of Pan American World Airways, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for amendment to its certificate of public convenience and necessity for Route 136, to provide nonstop service between Miami, Florida and Bogota, Colombia on December 16, 1987, or as soon as all necessary governmental approvals are received.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 87–26763 Filed 11–17–87; 9:08 am]

BILLING CODE 4910–62–M

## Coast Guard

**[CGD 87–81]**

### National Offshore Safety Advisory Committee; Applications for Appointment

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for applications.

**SUMMARY:** The U.S. Coast Guard is seeking applications for appointment to membership on an offshore safety advisory committee presently being considered for establishment by the Coast Guard.

If established, the committee will act solely in an advisory capacity to the Commandant of the United States Coast Guard on matters relating to the offshore mineral and energy industries.

The appointment of 14 regular members is being considered as follows: Two (2) members representing companies engaged in the production of petroleum; two (2) members representing enterprises specializing in offshore drilling; two (2) members representing enterprises specializing in the support, by offshore supply vessels or other vessels, of offshore mineral and oil operations; one (1) member representing enterprises engaging in the construction of offshore exploration and recovery facilities; one (1) member representing enterprises engaging in diving services related to offshore construction, inspection and maintenance; one (1) member representing enterprises engaging in geophysical services related to offshore exploration and construction; one (1) member representing enterprises engaging in pipelaying services related to offshore construction; two (2) members representing individuals employed in offshore operations; one (1) member representing the general public, but not representing a specific environmental group; and one (1) member representing national environmental interests. It is expected that a member would serve for a term of no more than three years.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. If established, the Committee would be expected to meet approximately twice per year.

**DATE:** Request for applications should be received not later than December 18, 1987.

**ADDRESS:** Persons interested in applying should write to Commandant (G–MVI–4), U.S. Coast Guard Headquarters, Washington, DC 20593–0001.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander S.T. Ciccalone, Offshore Activities Branch, Commandant (G–MVI–4), Room 1405, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001; (202) 267–2307.

Dated: November 13, 1987.

**J.W. Kime,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 87-26610 Filed 11-17-87; 8:45 am]

BILLING CODE 4910-14-M

**[CGD 87-084]**

## Working Groups for the Subcommittee on Vapor Control, Chemical Transportation Advisory Committee; Meetings

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of meetings of the Fire Protection Working Group, Waterfront Facilities Working Group, Tankship Working Group, and Tank Barge Working Group for the Subcommittee on Vapor Control of the Chemical Transportation Advisory Committee (CTAC). The Subcommittee is considering requirements for tank vessels and waterfront facilities which use vapor control systems. The purpose of the working groups is to develop recommended safety requirements for vapor control systems in their respective areas. The recommendations of each working group will be considered by the full Subcommittee at its next meeting. The meetings of the working groups will be held on Thursday, December 10, 1987 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. Prior to convening the working groups, members of each working group will neet jointly in order to coordinate efforts. A similar joint meeting will be held at the conclusion of the working group meetings. The meeting is scheduled to begin at 9:00 a.m. The agenda is as follows:

1. Call to order.
2. Opening remarks.
3. Break up into individual working groups.
4. Discussion and development of safety requirements relating to vapor control systems and their components in the area of each working group.
5. Re-gathering of working groups and discussion of progress.
6. Adjournment.

Attendance is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander R. H. Fitch, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second St. SW., Washington DC 20593-0001, (202) 267-1217.

Dated: November 13, 1987

**P. C. Lauridsen,**

*Captain, U.S. Coast Guard Deputy Chief, Office of Marine Safety Security and Environmental Protection.*

[FR Doc. 87-26608 Filed 11-17-87; 8:45 am]

BILLING CODE 4910-14-M

## Federal Aviation Administration

**[Advisory Circular 25-11]**

## Transport Category Airplane Electronic Display Systems

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of issuance of advisory circular.

**SUMMARY:** This notice announces the issuance of Advisory Circular (AC) 25-11, Transport Category Airplane Electronic Display Systems. The AC provides guidance for certification of cathode ray tube (CRT) based electronic display systems used for guidance, control, or decision-making by the pilots of transport category airplanes.

**DATE:** Advisory Circular 25-11 was issued by the FAA, Aircraft Certification Division, in Seattle, WA, on July 16, 1987.

*How to obtain copies:* A copy of AC 25-11 may be obtained by writing to the U.S. Department of Transportation, M-443.2, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on October 27, 1987.

**Leroy A. Keith,**

*Manager, Aircraft Certification Division, Northwest Mountain Region.*

[FR Doc. 87-26512 Filed 11-17-87; 8:45 am]

BILLING CODE 4910-13-M

## Flight Service Station Closure; Cape Girardeau, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**SUMMARY:** Notice is hereby given that on October 31, 1987, the Flight Service Station at Cape Girardeau, Missouri, was closed. Hereafter, services to the general public at Cape Girardeau, Missouri, will be provided by the Flight Service Station at St. Louis, Missouri. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on October 27, 1987.

**Paul E. Marchbanks,**

*Acting Division Manager, Air Traffic Division.*

[FR Doc. 87-26513 Filed 11-17-87; 8:45 am]

BILLING CODE 4910-13-M

## Flight Service Station Closure; Joplin, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**SUMMARY:** Notice is hereby given that on October 31, 1987, the Flight Service Station at Joplin, Missouri, was closed. Hereafter, services to the general public at Joplin, Missouri, will be provided by the Flight Service Station at Columbia, Missouri. This information will be reflected in the next issue of the FAA Organization Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on October 27, 1987.

**Paul E. Marchbanks,**

*Acting Division Manager, Air Traffic Division.*

[FR Doc. 87-26514 Filed 11-17-87; 8:45 am]

BILLING CODE 4910-13-M

## Flight Service Station Closure; Lincoln, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**SUMMARY:** Notice is hereby given that on October 31, 1987, the Flight Service Station at Lincoln, Nebraska, was closed. Hereafter, services to the general public at Lincoln, Nebraska, will be provided by the Flight Service Station at Columbus, Nebraska. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on October 27, 1987.

**Paul E. Marchbanks,**

*Acting Division Manager, Air Traffic Division.*

[FR Doc. 87-26515 Filed 11-17-87; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

**[Department Circular; Public Debt Series No. 33-87]**

### Treasury Notes of November 30, 1989; Series AF-1989

**November 13, 1987.**

**1. Invitation for Tenders**

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of November 30, 1989, Series AF-1989 (CUSIP No. 912827 VP 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

**2. Description of Securities**

2.1. The Notes will be dated November 30, 1987, and will accrue interest from that date, payable on a semiannual basis on May 31, 1988, and each subsequent 6 months on November 30 and May 31 through the date that the principal becomes payable. They will mature November 30, 1989, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

**3. Sale Procedures**

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, November 18, 1987. Noncompetitive tenders as defined below will be considered timely if postponed no later than Tuesday, November 17, 1987, and received no later than Monday, November 30, 1987.

3.2. The par amount of tenders bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rates, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or more of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

**4. Reservations**

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

**5. Payment and Delivery**

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, November 30, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, November 25, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, November 30, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes alloted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

**6. General Provisions**

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 87-26707 Filed 11-16-87; 1:53 pm]

BILLING CODE 4810-40-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on December 9 and 10, 1987. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8:00 a.m. on Wednesday, December 9 and 8:00 a.m. on Thursday, December 10. The agenda will include the following topics:

**Wednesday, December 9, 1987**

Role of the Practitioner
Complexity and Change
Audit Quality
Criminal Enforcement Program

**Thursday, December 10, 1987**

Recurring Collection Problems
General Discussion and Observations

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, no later than December 1, 1987. Mr. Hilgen can be reached on (202) 566-4143 (not toll-free).

If you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, 1111 Constitution Ave. NW., Room 3014, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Robert F.Hilgen, Assistant to the Senior Deputy Commissioner, (202) 566-4143 (Not toll-free).

**Lawrence B. Gibbs,**

*Commissioner.*

[FR Doc. 87-26540 Filed 11-17-87; 8:45 am]

BILLING CODE 4830-01-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 222
Wednesday, November 18, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**COMMODITY CREDIT CORPORATION**

**TIME AND DATE:** 2:00 p.m., November 23, 1987.

**PLACE:** Room 104A-Administration Building, U.S. Department of Agriculture, Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda to be announced.

**CONTACT PERSON FOR MORE INFORMATION:** James V. Hansen, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, D.C. 20013; telephone (202) 475–5490.

Date: November 16, 1987.

**George E. Rippel,**

*Acting Secretary, Commodity Credit Corporation.*

[FR Doc. 87–26696 Filed 11–16–87; 2:39 pm]

BILLING CODE 3410–05–M

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

November 13, 1987.

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Vol. 52, No. 218, November 12, 1987.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** November 12, 1987, 10:00 a.m.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**CHANGES IN THE MEETING:** The meeting scheduled for November 12, 1987 has been rescheduled for November 19, 1987. See item #3 below.

**TIME AND DATE:** 10:00 a.m., Thursday, November 19, 1987.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. *U.S. Steel Mining Company, Inc.*, Docket Nos. PENN 87–37, etc. (Issues include consideration of U.S. Steel's petition for discretionary reviews.)
2. *Secretary of Labor v. Michael Brunson*, Docket No. SE 86–40–M. (Issues include whether the Administrative Law Judge properly concluded that Michael Brunson knowingly permitted a violation of a mandatory safety standard within the meaning of section 110(c) of the Mine Act.)
3. Consideration of possible revisions to Commission Procedural Rules 1–12. 29 CFR 2700.1 through 2700.12.

It was determined by a unanimous vote of Commissioners that this meeting be held and no earlier announcement of the meeting was possible. The November 12 rescheduling was due to inclement weather.

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen, (202) 653–5629.

**Jean H. Ellen,**

*Agenda Clerk.*

[FR Doc. 87–26691 Filed 11–16–87; 2:53 pm]

BILLING CODE 6735–01–M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 11:00 a.m., Monday, November 23, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Building, C Street entrance between 29th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at appproximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: November 13, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87–26600 Filed 11–13–87; 5:10 pm]

BILLING CODE 6210–01–M

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**TIME AND DATE:** Tuesday, November 17, 1987 at 10:00 a.m.

**PLACE:** Room 117, 701 E Street, NW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 701-TA-282 (Final) (Certain Forged Steel Crankshafts from Brazil)—briefing and vote.
6. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 523–0161.

**Kenneth R. Mason,**

*Secretary.*

November 6, 1987.

[FR Doc. 87–26625 Filed 11–13–87; 5:13 pm]

BILLING CODE 7020–02–M

**NATIONAL MEDIATION BOARD**

**TIME AND DATE:** 2:00 p.m., Wednesday, December 9, 1987.

**PLACE:** Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Ratification of the Board actions taken by notation voting during the month of November, 1987.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

**SUPPLEMENTARY INFORMATION:** Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Charles R. Barnes, Executive Director, Tel: (202) 523–5920.

Date of Notice: November 16, 1987.

**Charles R. Barnes,**

*Executive Director, National Medication Board.*

[FR Doc. 87–26722 Filed 11–16–87; 2:59 pm]

BILLING CODE 7550–01–M

Federal Register

Wednesday
November 18, 1987

Part II

# Department of Transportation

Federal Aviation Administration

14 CFR Part 139

Airport Certification; Revision and Reorganization; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 139**

**[Docket No. 24812; Amdt. No. 139-14]**

## Airport Certification; Revision and Reorganization

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises and reorganizes the part of the Federal Aviation Regulations dealing with the certification and operation of airports serving certain air carriers. It is needed to clarify the language in the part, to make it more understandable, to define certain requirements more specifically, to impose additional safety requirements, and to modify other requirements considered unnecessary and unduly costly.

**DATE:** The effective date of this amendment is January 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jose Roman, Jr., Safety and Compliance Division (AAS-300), Office of Airport Standards, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-8724.

**SUPPLEMENTARY INFORMATION:**

### Background

This amendment was proposed in Notice of Proposed Rulemaking (NPRM), Notice No. 85-22 (50 FR 43094; October 23, 1985), which provided all interested persons with the opportunity to comment and to participate in this rulemaking.

Since 1970, section 612 of the Federal Aviation Act of 1958 (FAAct) (49 U.S.C. 1432) has empowered the Administrator to issue airport operating certificates to airports serving certain air carriers, and to establish minimum safety standards for the operation of those airports. Part 139 of the Federal Aviation Regulations (FAR), adopted on June 12, 1972, effective July 21, 1972 (37 FR 12278; June 21, 1972), as amended, prescribes rules governing the certification and operation of airports served by air carriers with aircraft having a seating capacity of more than 30 passengers. As was explained in Notice No. 85-22, with the experience gained and advancements made since the adoption of Part 139, with the recommendations made by the National Transportation Safety Board (NTSB), and with the comments offered by various segments of the public, it became apparent that substantial revisions of Part 139 were needed. It was recognized that the organization of the part was in many places cumbersome and confusing, and certain sections required clarification to better define the requirements and to make them more understandable. In addition, it was clear that certain requirements needed to be added or strengthened to enhance safety. Others needed modification to improve the benefit to cost ratio without affecting safety.

Notice No. 85-22 was issued to address these concerns. Comments were received covering all parts of the rule and have been considered in developing this amendment.

### Discussion of the Comments and the Amendment

A total of 179 commentators responded to Notice No. 85-22. The comments represented the views of airport operators, pilots, airlines, consumer groups, Federal agencies, state and local governments, and Congress.

A significant number of the comments suggested word changes, clarification, and organization. For the most part, these comments were accepted. The changes resulted in a better organized and more understandable regulation. Where a section or change in wording is not discussed in this preamble, the amendment is adopted for the same reasons as were stated in the notice.

### Subpart A—General

*Section 139.1 Applicability.*

As with former Part 139, the part is not applicable to airports at which only air carrier training, ferry, or aircraft check or test operations are conducted. Section 139.1 has been amended to make clear that it does not apply to airports at which air carrier operations are conducted only by reason of the airport being designated as an alternate airport.

*Section 139.3 Definitions.*

Many commentators expressed concern with the proposed definition of a "movement area" and suggested instead the retention of the term "air operations area." The concern dealt primarily with including the loading ramps and aircraft parking areas within the definition of "movement area." Under proposed § 139.325 (adopted as § 139.329), this would have required two-way radio communication between service vehicles on the loading ramps and parking areas and the airport traffic control tower, or other controlling means. This was not the intent of the proposed "movement area" definition and hence the final rule has been changed to exclude the loading ramps and parking areas from the definition. Where a section is meant to apply to loading ramps and parking areas, it specifically so states.

Additional definitions have been added since the NPRM was issued to facilitate using Part 139. These definitions are intended to clarify terminology, not change the requirements.

A new definition, "air carrier operation", includes the period of time from 15 minutes prior to, until 15 minutes after, the takeoff or landing, to ensure that aircraft rescue and firefighting (ARFF) equipment are in place to provide the level of protection required by this part.

*Section 139.5 Airport certification standards and procedures.*

A few commenters opposed the reference to the Advisory Circulars as acceptable means of compliance with the rule. It was felt that the reference would impose on the airport operators additional requirements which are contained in the Advisory Circulars but not in the rule. However, the majority of the comments agreed with referencing the Advisory Circulars provided that these publications were kept current. The Advisory Circulars are intended to identify acceptable means of compliance with Part 139, but are not the only means.

### Subpart B—Certification

*Section 139.109 Duration of certificate.*

A number of responders opposed the provision which would permit the FAA to reduce an airport operating certificate to a limited airport operating certificate if the airport no longer serves or is expected to serve any scheduled operations of air carrier aircraft. They suggested that a reduction of a certificate should be at the option of the airport operator and not at the option of the Administrator. Many expressed concern that the costs to upgrade the certificate would prove burdensome in the event that this upgrading was needed at some later date. The FAA is not aware of any reason why it is more expensive to surrender a full certificate and then later regain the certificate than it is to continue the certificate uninterrupted. Further, the airport may maintain Part 139 standards without a full certificate if it chooses. In deciding whether to revoke a full certificate and issue a limited certificate, the airport's reasonable expectation of future air carrier service will be considered.

The FAA has determined that it is unnecessary to state in Part 139 the

authority and procedures under which the FAA suspends or revokes an airport operating certificate or a limited airport operating certificate. It is clear from section 609 of the Federal Aviation Act of 1958 (the Act) that the Administrator may suspend or revoke such a certificate if he determines that safety in air commerce or air transportation and the public interest requires it. As indicated in the proposed section, such a determination may be based on a failure to comply with any requirement of the Act, Part 139, the provisions or limitations of the certificate, or the airport's approved certification manual or specifications. Included in these grounds for suspension or revocation is the failure to continue to meet the eligibility requirements for a certificate. Also, it should be noted that under section 609 a certificate could be suspended or revoked for violation of other regulations, such as a failure of the airport to comply with the aviation security requirements of Part 107. The applicable procedures for any certificate action are clearly set forth in Part 13.

**Subpart C—Airport Certification Manual and Airport Certification Specifications**

*Section 139.201 Airport operating certificate: Airport certification manual.*

Proposed § 139.201 stated: "only those items required by the Administrator for certification under this part are deemed approved by the Administrator." A number of commenters agreed with this proposal. However, after further consideration, it appears that the provision could be misinterpreted by a certificate holder to allow it to disregard portions of the manual which it felt were not strictly necessary under Part 139. This was not intended. The manual is intended to clearly specify the certificate holder's responsibilities, and thus minimize uncertainties in the program. The rule, as adopted, requires that a certificate holder must comply with its manual, even if it believes the manual has requirements beyond the minimum necessary for Part 139 certification. For instance, if a certificate holder's manual requires it to conduct an inspection of the airport specified in § 139.327 7 days a week, but it has air carrier operations only 5 days a week, the certificate holder must comply with its manual. While the certificate holder may have grounds to amend its manual, it is not free to disregard it. On the other hand, subjects not addressed in Part 139 should not be included in the manual and would not be enforced by the FAA. The rule as adopted provides: "only those items addressing subjects required for certification under this Part shall be included in the airport certification manual."

A few commenters suggested that the manual required by Part 139 should be termed "Airport Certification Manual", to emphasize that the manual covers only airport certification requirements, not all aspects of airport operations. The FAA has decided to adopt the term "Airport Certification Manual." It was also suggested that a lead time or grace period should be provided for revising the manual to comply with the rule revision. Some expressed concern that a total rewrite of the existing manuals would be required to reflect the reorganization of Part 139. It is not FAA's intent that a new manual would have to be developed for every certificated airport. However, existing manuals would require modification and some restructuring to comply with the new requirements. The FAA is allowing 1 year from the effective date of this amendment to bring existing manuals into compliance with the new requirements. If there are extenuating circumstances or compelling reasons why additional time is necessary, the Administrator may approve a time extension.

*Section 139.205 Contents of airport certification manual.*

Some commenters expressed concern with the requirement to include, in the airport certification manual, a description of each access road designated for use by firefighting and rescue vehicles. Other comments suggested that the access routes to be included in the manual be limited to those in the "air operation areas." Others felt that the entire road network be addressed rather than just the access roads. The FAA has determined that the wording in the rule is adequate, permitting the certificate holder to determine, as part of its planning for emergencies, which roads will most likely be needed during emergency conditions and to designate them as such in the manual.

*Section 139.209 Airport operating certificate: Airport certification specifications.*

As with proposed § 139.201, proposed § 139.209 stated: "only those items required by the Administrator for certification under this part are deemed approved by the Administrator." Commenters agreed with this proposal. However, the FAA is equally concerned that the provision could be misinterpreted by a certificate holder to allow it to disregard portions of the specifications which it felt were not strictly necessary under Part 139. Accordingly, § 139.209, as adopted, specifies that the certificate holder must comply with its specifications, even if it believes the specifications have requirements beyond the minimum necessary for Part 139 certification. As with the airport certification manual, subjects not addressed in Part 139 should not be included in the specifications and would not be enforced by the FAA. This section also provides: "only those items addressing subjects required for certification under this part shall be included in the airport certification specifications."

In response to comments, a similar terminology has been used to require that the specifications required by Part 139 be termed "Airport Certification Specifications", to emphasize that the specifications cover only airport certification requirements, and not all aspects of airport operations. A lead time or grace period has also been provided for revising the specifications to comply with the rule revision. The FAA is allowing 1 year from the effective date of this amendment to bring existing specifications into compliance with the new requirements. As in the case of airport certification manuals, if there are extenuating circumstances or compelling reasons why additional time is necessary, the Administrator may approve a time extension.

**Subpart D—Operations**

*Section 139.305 Paved areas.*

A number of commenters indicated that a better definition for a pavement hole was needed. The proposed maximum surface area of 12 square inches would be reasonable if maximum and minimum dimensions were also specified, they stated. As proposed, a very thin, long crack would fall within the stated definition of a hole. This was not the intent of the proposed rule. Consequently, the rule has been changed to define a hole specifically with maximum and minimum dimensions. A crack would be prohibited if it could impair the directional control of the aircraft. A few commenters from Alaska recommended the addition of a section dealing with unpaved areas. Since there are some certificated airports in the state with gravel runways, this recommendation was accepted. One commenter did not agree with the 3-inch lip criteria for pavement edges. Instead, it was recommended that a 1-inch criteria be used. The FAA has determined that a 1-inch criteria would be unduly restrictive.

The 3-inch criteria has withstood the test of time, proved to be reasonable, and to have provided a satisfactory margin of safety.

*Section 139.309 Safety areas.*

Some commenters expressed concern with the requirement for a safety area and suggested allowing exemptions by the Administrator. The NTSB recommended that all runways utilized by air carrier aircraft have safety areas or safety areas constructed as close to the standards as possible. A few commentators recommended that the FAA define the dimensions for safety areas to eliminate the confusion which has existed in the past. Two pilot associations suggested establishing a timeframe for those airports whose safety areas are not in accordance with standards to bring all safety areas into conformity with current standards. While safety areas are a highly desirable safety feature, the FAA recognizes that requiring full-size safety areas or requiring upgrading of existing safety areas when FAA criteria are upgraded is not practicable either physically or economically. Although the FAA will continue to require full-size safety areas to the extent practicable, it has determined that certificate holders should not be required to upgrade safety areas each time the FAA changes its criteria. This section also clarifies and codifies certain existing safety area criteria.

The rule, as adopted, requires that the certificate holder maintain the dimensions of safety areas as they existed on the day before the effective date of this amendment. For runways and taxiways constructed, reconstructed, or significantly expanded on or after the effective date, to the extent practicable, the safety area must meet criteria acceptable to the Administrator at the time of construction, reconstruction, or expansion.

*Section 139.311 Marking and lighting.*

A number of commenters stated that airport rotating beacons are not necessary at all airports and should be installed at the discretion of the airport operator. The FAA has received numerous recommendations from air carrier pilots to the effect that a rotating beacon is a valuable visual aid and should be required. These letter recommendations were accepted.

A number of commenters requested clarification of the provision requiring taxiway centerline lighting and edge lights or reflectors. The requirement has been clarified to state that only one of these items is required. The NTSB and a pilot's association support the requirements for signs and markings.

The NTSB and others recommended requiring runway hold marking and signs for all runways, not just those runways with an ILS and runway critical areas. After further consideration, the FAA agrees with these recommendations. These markings and signs should help to reduce runway incursions.

*Section 139.313 Snow and ice control.*

A significant number of commenters expressed concern with the proposed requirement that there be "no ice on movement areas". The commenters felt, however, that a certificate holder should, in accordance with the airport snow removal plan, mitigate as much as possible the effects of snow and ice on air carrier operations. A pilots' association supported the complete removal of all ice, snow, and slush from the movement areas. Criticism of the proposal has merit. In some areas of the country, for instance, snow is compacted in a manner which provides an acceptable surface for aircraft operations. The final rule provides procedures for prompt removal and control, as completely as practical, of snow, ice, and slush.

A number of commentators suggested that a better definition of "it is likely that snow conditions will exist" is required. This has been modified to "where snow and icing conditions regularly occur."

The NTSB supports more definitive standards and the need for a written snow removal plan. The FAA accepts the recommendations and they are reflected in the rule as adopted.

*Section 139.315 Aircraft rescue and firefighting: Index determination.*

With respect to the airport firefighting index, a few commentators expressed concern that the level of aircraft rescue and firefighting (ARFF) capability required for the busiest 3 consecutive months may serve to unnecessarily penalize airports serving largely seasonal tourist traffic. The comments suggested that instead, the index should be based on the average daily departures over the entire year. From the commenters there was considerable support for the busiest 3 months criteria. This requirement was adopted in the rule. Basing the level on the busiest 3 consecutive months of the year ensures that airports have an adequate level of service during high-use periods and is consistent with guidance isued by the International Civil Aviation Organization. At times when the actual air carrier aircraft size serving the airport would permit a lower designated airport index, the certificate holder may reduce its firefighting service accordingly under § 139.319(c).

A number of commentators expressed concern that the method of determining the required index contains anomalies that would allow a Boeing 727, or higher index aircraft, to operate with the minimum firefighting capabilities provided by Index A. This could have occurred if there were less than five average daily departures of all air carrier aircraft serving the airport. Based on these comments, the method of determining the required index was revised to eliminate this anomally and to require all certificated airports to provide an appropriate level of ARFF during air carrier operations.

The rule, as adopted, will require an Index which is determined by the largest aircraft serving the airport. If there are 5 or more air carrier operations of that aircraft group, the Index will be for that group's level. However, if there are less than 5 air carrier operations, the Index will be one Index below that specified for that aircraft group.

For example, assume the airport is served by 5 Boeing 727s and two Boeing 737s, the Index would be Index C. If the number of Boeing 727 operations dropped to 3 operations, the Index required would be Index B. If there is only one Boeing 727 operation, and no other operations by other air carrier aircraft, then the Index would remain Index B, one below the specified Index for the airport. The operator may use the next lower Index when there are less than 5 air carrier operations in any one air carrier aircraft group. The FAA has determined that this change will have no economic impact on existing airports. In the future, airports applying for airport operating certificates which might experience an adverse economic impact can apply for an exemption to the ARFF requirements.

*Section 139.317 Aircraft rescue and firefighting: Equipment and agents.*

A few commenters suggested that the requirements for ARFF at small airports was economically indefensible, inefficient, and a waste of resources. The NTSB and others felt that firefighting capabilities should not be determined on a case-by-case basis as permitted under the NPRM for Index A. The latter group felt that minimum standards should be provided. After carefully considering these comments, the FAA concluded that ARFF determination on a case-by-case basis is not in keeping with its responsibility under the Federal Aviation Act of 1958.

Section 601 of the Act gives full consideration during rulemaking to the air carrier's duty to perform its services with the highest possible degree of safety in the public interest. Reducing the requirements for the smaller airports would be inconsistent with this responsibility. Instead, a specific requirement for Index A airports, similar to existing requirements, is specified in § 139.317(a).

We believe that Index A requirements have been minimal and have not been unduly burdensome on the certificate holders. Nevertheless, we continue to be sensitive to the cost to the airports of providing an adequate rescue and firefighting capability. While the FAA has the responsibility to ensure that adequate safety standards are maintained, we are equally cognizant of the need to minimize costs. If, in the future, there appears to be a method of achieving adequate airport fire safety that is less burdensome on certificate holders, we will consider modifying our requirements accordingly.

A number of commentators opposed reducing the number of ARFF vehicles for Index B while others supported the reduction. Those opposed were concerned that a reduction would provide an inadequate ARFF capability. The FAA has determined that the capacity of the proposed vehicle is sufficient. However, the rule, as adopted, provides a one or a two-vehicle option to meet Index B requirements. Airport operators may want to select the one-vehicle option, since it offers a potential economic benefit.

A number of commenters were concerned with the opportunity under Index B or C to select an option that did not include a rapid response vehicle. It was argued that no justificiation existed to support requiring a vehicle, carrying 1500 gallons of water and AFFF, to respond in 3 minutes. It was alleged that this sophisticated equipment and short response requirement was not warranted. The rule, prior to this amendment, provided no option since each index required an Index A-type vehicle that could be used to satisfy the 3-minute criteria. The commenters are concerned that there would be an immediate requirement to require new vehicles to satisfy the new standard. However, the certificate holder's current equipment is "grandfathered in" under § 139.37(f) and may be used until all vehicles are replaced or rehabilitated. Advances in the state-of-the-art have now made it feasible for the new, larger ARFF vehicles to meet the response time requirements. Accordingly, the FAA has determined that it is reasonable to require a 3-minute response time for the larger vehicles, when the option selected by the airport limits available ARFF equipment to that type.

The final rule makes it clear that the amount of dry chemical required contemplates use of sodium-based dry chemical. An appropriate amount of potassium-based dry chemical may be substituted under § 139.317(i)(6).

The final rule specifies, as with AFFF discharge capacity, discharge rates for dry chemical or halon.

*Section 139.319 Aircraft rescue and firefighting: Operational requirements.*

A number of commenter opposed relaxing the response time for Index A. This aspect was also considered in the reevaluation of the Index A ARFF requirements, with the conclusion that a response time is essential in order to provide an effective rescue capability.

A number of commenters suggested that the requirement for ARFF vehicle communications should be outlined in the airport emergency plan. The FAA believes that the operational requirements for ARFF equipment should be specified in only one section of the regulation to avoid misinterpretation and possible confusion. The emergency plan itself, may restate these communications procedures. However, they will only be specified in the regulation in § 139.319.

A significant number of commenters disagreed with the proposal to require restricting air carrier operations after an ARFF vehicle becomes inoperable for a period greater than 8 hours, rather than the 10 days currently permitted in the rule. Concern was expressed that it might be impossible to obtain replacement parts in that timeframe, and that it was overly restrictive and would impose an economic burden on airport operators. A number of commenters recommended restricting air carrier operations after 24–48 hours of a ARFF vehicle downtime rather than 8 hours. After taking into consideration these views, and after assessing possible risks associated with airports having insufficient equipment for up to 10 days, the rule, as adopted, permits down time of up to 48 hours before restricting air carrier operations.

A significant number of commenters recommended that different levels of emergency medical care training should be set forth considering the wide range of airport firefighting indexes. It was argued that it is not realistic for Index A to have the same requirements as Index E. Some found the emergency medical care requirements unacceptable and recommended that they be entirely removed. This group maintained that the cost of implementing this requirement had been grossly underestimated and that inadequate consideration was given to the increased liability and insurance costs, increased training costs, reduced flexibility in assignment of personnel, etc. The NTSB believes that one Emergency Medical Technician (EMT) is inadequate and recommended indexing by airport size. A pilots' association recommended that at least 50 percent of ARFF personnel be EMT-trained.

The commenters did not provide support for their assertion as to the cost of training and the FAA has found that the training is available for little or no cost in many areas. Further, it appears that many current airport firefighters already have this training (even though they may not be termed "EMT" under state licensing requirements) and virtually all professional firefighters have the training. Therefore, it appears the rule would not provide an undue burden and should provide significant benefits. After evaluating the comments, the rule is adopted, as proposed, to require that, during air carrier operations, at least one of the required firefighting personnel on duty be trained and current in basic emergency medical care.

A few commenters proposed that the access roads provision be deleted in its entirety. It was contended that the regulation should address the issue of road network and not access roads. The proposal would not require that all existing access roads be maintained but only those designated for ARFF use. The FAA is aware that there are many access roads on airports which would not be appropriate or necessary for emergency vehicle use. It would be an unnecessary burden to maintain the entire road system for such purposes. This issue can be effectively addressed by designating those roads considered essential to ARFF in the certification manual. This would clearly identify the roads to be maintained for the intended use and would ensure that the firefighters would know which roads could be relied on to gain rapid access to various parts of the airport.

*Section 139.321 Handling and storing hazardous substances and materials.*

Comments were received from the public and governmental sources such as NTSB. They recommended that revisions be made to the fuel handling and storage requirements. Additionally, a number of Congressional comments were received expressing concern about the safety of fueling operations on airports. Other comments suggested that FAA develop regulatory procedures to

ensure more effective monitoring of aircraft fueling. In this regard, it was also suggested that the FAA encourage voluntary industry efforts to address these concerns. A series of industry meetings were held regarding this issue. Subsequently, a consensus industry position was adopted consisting of a five-point program which included the recommendation that misfueling and fuel contamination precautions would be undertaken on a voluntary basis by the fuelers.

The preponderance of the commenters favored Option 2, which would rely on a voluntary industry program of tenant fueling practices and procedures to protect against misfueling, fuel contamination and provide the necessary training. This option relies heavily on the guidance contained in the FAA Advisory Circular on recommended fueling practices and procedures. Under this option the airport operator will retain responsibility for exercising control over tenant fueling practices with respect to safety from fire and explosion. A few commenters favored Option 1, which would continue to require airport operators to exercise general oversight of fueling activities, including assuming risks of fire, contamination, and misfueling. Some commenters favored certification of fuelers, and relieving airport operators from all responsibility for these hazards, while retaining airport operator responsibility for exercising some control with respect to safety from fire and explosion.

A number of concerns have been raised about each of these options. The option to certificate fuelers would be very costly and time consuming for both the FAA and industry. There are about 700 certificated airports, many with more than one tenant fueler. To create a new Federal administrative program to regulate this large and diverse number of operators would be burdensome and impractical.

Some commenters felt continuing to require airport operators to exercise general oversight over quality control and aircraft fueling and the necessary training to support these activities imposes on airport operators an inappropriate responsibility. Many expressed the view that airport personnel did not possess the necessary technical knowledge to conduct this surveillance. Other commenters expressed concern over the adequacy of obtaining a consistent level of safety by relying on voluntary programs.

Sections 121.133 and 135.21 require all air carriers to prepare and keep current a manual containing maintenance information and instructions for the use and guidance of ground operations personnel in conducting their operations. The manual must contain procedures for refueling aircraft, eliminating fuel contamination, protection from fire, and supervising and protecting passengers during refueling. For this reason, this amendment relieves Part 139 certificate holders of the requirement to exercise oversight over air carrier refueling operations.

The FAA has considered the recent advances made by the industry in the areas of protection against misfueling and contamination. A number of aviation fuel suppliers are issuing a "seal of approval" to Fixed Base Operators that meet or exceed the fuel company standards. NATA, AAAE and other organizations have developed a series of fueling courses and are making them available to fueling personnel throughout the industry. These courses cover areas such as quality control, filtration, loading and unloading, storage, handling, testing, etc. In addition, insurance companies, air carriers, and aviation fuel suppliers conduct fuel quality inspections. Through industry's own self inspection efforts quality control and reductions of fuel contamination have significantly improved.

Industry has taken a number of additional steps such as developing and installing special fuel hose nozzles and retrofit filler openings for aircraft to prevent misfueling. NATA estimates that ninety percent of the jet fuel hoses in the United States have been retrofitted with new nozzles. Although, progress has been slow in persuading the owners of aircraft which should not receive jet fuel to install preventive inserts in the aircraft's fuel filler openings, industry education programs for both the fueler and the owner have been successful in significantly reducing incidents of misfueling. In addition, the largest aviation insurance carrier for general aviation aircraft is offering to rebate to the owner all of the cost of retrofitting these filler openings.

It has been determined that voluntary programs instituted by industry have significantly reduced the safety concerns related to these activities. The FAA is not aware of any misfueling or contamination accident, since the industry voluntary programs went into effect. Under the circumstances, the FAA has concluded that relieving the airport operator of oversight responsibility for quality control and aircraft fueling activities of its tenant fuelers will not result in a derogation of safety. The rule as adopted, conforms to this option (Option 2). However, the FAA will continue to monitor fueling to determine if any additional action will be needed in the future.

*Section 139.323 Traffic and wind direction indicators.*

The reference to wind "tees" has been deleted because they are considered obsolete by the industry.

*Section 139.325 Airport emergency plan.*

A number of commenters suggested deleting the requirements for water rescue since water areas off the airport are beyond the jurisdiction of the certificate holder. Others felt that water rescue, "to the extent practicable," should have the broadest interpretation possible in order to be effective. The rule is being adopted as proposed. It requires certificate holders to attempt to locate, and coordinate with, organizations which would agree to provide water rescue services. The rule does not require the certificate holder to provide water rescue if such services are not available in the community, and therefore, does not rely on the certificate holder's jurisdiction over the water. Bodies of water adjacent to the airport have been specifically described to eliminate a concern over ambiguity expressed by a few comments. The one-quarter square mile criteria was developed to define a body of water which, in most instances, is sufficient to create significant difficulty in rescuing persons from an aircraft coming to rest in the water. Should a certificate holder have a body of water which meets the criteria, but which, due to its unique features would not create such difficulties, an exception from the requirements may be appropriate.

A number of commenters recommended that a full-scale demonstration of the emergency plan be required. The recommended time interval between demonstrations varied between 2–4 years. To assist in the evaluation, the FAA requested comments on the costs to conduct a demonstration, the extent to which airports now conduct such demonstrations, and the extent to which such demonstrations are useful. Most of the comments only addressed the time interval between demonstrations. The FAA has decided to require a full-scale demonstration of the emergency plan every 3 years. This interval will be adequate to deal with personnel turnover and provide for retraining and training of new personnel. This full-scale demonstration will require a simulated emergency having each facet of the airport emergency plan exercised as it would in an actual aircraft disaster.

This will include ARFF, local medical resources, and other activities as required in the plan.

*Section 139.329 Ground vehicles.*

A number of commenters recommended deleting the requirements limiting vehicles on the movement areas to those necessary for airport operations. The definition of movement area, including loading ramps and parking areas, raised questions about control and access of numerous ground vehicles needed to serve aircraft during loading and unloading. It was argued that this would generate an unreasonable requirement for two-way radios or other communication methods. The definition of a movement area has been changed to specifically exclude loading ramps and parking areas. Communication with and control of vehicles involved in inspection, fueling, baggage handling, and other normal activities on the ramps and parking areas, because of the definition change, will no longer be a matter of concern.

A number of commenters believed that maintaining a record of accidents should apply to the airside only. The proposal has been clarified to cover only accidents or incidents on the movement areas involving aircraft and/or ground vehicles.

*Section 139.333 Protection of navaids.*

A pilots' association expressed concern that other activities on the airport, such as mowing, could interfere with navaids. The intent of the proposal was to prevent such interference. In response to this comment, a new § 139.333(c) clarifies the certificate holder's responsibility.

*Section 139.335 Public protection.*

As a result of evaluating the comments, the FAA concluded it would be more consistent with the subject matter to remove "large animals" from this section and include it under § 139.337 Wildlife hazard management. The section is now limited to inadvertent entry of persons and vehicles.

*Section 139.337 Wildlife hazard management.*

A number of commenters objected to the proposal requiring safeguards against inadvertent entry onto the airport operations area by large animals. They contend that ordinary fencing is ineffective in preventing deer from entering the airport. The NTSB and a pilots' association supported the proposal which requires reasonable safeguards against inadvertent entry by all large animals. It is necessary for safety that, when a significant wildlife safety hazard has been identified, reasonable steps be taken to eliminate or reduce the hazard. A number of means, including special fencing, are available to control large animal hazards, without undue expense.

A number of commenters recommended deleting the section dealing with bird hazard management in its entirety and retaining the requirements as stated in § 139.67 of the current regulation. It was asserted that the proposal was too detailed for a regulation and more properly belongs in an Advisory Circular. A few responders felt that the proposal does not deal with other wildlife hazards. Others recommended that a definition of what constitutes a bird hazard was needed and a minimum bird control criteria be defined. As used in the final rule, wildlife has been defined to include domestic animals while out of the control of their owners. The regulation has been revised to include criteria for the identification of a wildlife hazard. These criteria were based on recommendations received from industry comments. The criteria identifies situations which may reasonably present a significant safety hazard. Section 139.337 provides for the conduct of an ecological study when any one of the specific events identified in the rule occur on or near the airport. The FAA can arrange for the Animal and Plant Health Inspection Service, of the Department of Agriculture, to conduct the ecological study at no cost to the certificate holder. In response to several comments, the final rule provides further clarification as to what is needed to make a workable wildlife hazard management plan which is consistent with all requirements.

Part 139 has required airport operators to have procedures to eliminate wildlife hazards. A new paragraph (f) has been added to § 139.337 to make it clear that airports continue to have this responsibility and implement procedures that respond immediately to wildlife hazards.

*Section 139.343 Noncomplying conditions.*

A number of commenters expressed concern that certificate holders should not be placed in a position requiring them to prohibit air carrier operations for whatever the reason. The group also recommended deleting the section dealing with noncomplying conditions and moving the contents to the section dealing with airport condition reporting. While the FAA agrees that these conditions should be listed in § 139.339, which requires reporting, it might still be necessary to limit air carrier operations if the condition is determined to be unsafe. Accordingly, the list of conditions has been moved to § 139.339, but § 139.343 will still require limiting air carrier operations, when appropriate. The FAA has determined that this is necessary to assure that operations are not conducted on parts of the airport that do not meet minimum safety requirements.

After considering all of the comments, the FAA has decided to adopt the amendment proposed in Notice No. 85-22, as modified by FAA's evaluation of the comments as set forth above. The amendment substantially reorganizes Part 139. Subpart A—General, contains the applicability provisions and definitions used in the Part. Subpart B—Certification, sets forth the general rules pertaining to the eligibility, application, and issuance of certificates. Subpart C—Airport Certification Manual and Airport Certification Specifications, contains rules for the preparation and maintenance of the certification manual and certification specifications. Subpart D—Operations, contains all of the requirements for equipment, facilities, maintenance procedures, and personnel.

**Regulatory Evaluation**

The following is a summary of the final regulatory evaluation for the regulatory changes adopted in this amendment. A full final regulatory evaluation has been prepared and placed in the regulatory docket.

Assumptions used to prepare economic estimates for the various changes to Part 139 have been developed by the FAA. The estimates of economic impacts for the final rule revisions have been constructed from unit cost and other data obtained from operators, industry trade associations, and manufacturers.

In the Notice of Proposed Rulemaking (NPRM), the FAA invited public comments concerning the technical and operational considerations and economic impact assumptions as these apply to emergency medical services, aviation fuel training courses, the cost of collisions with large wildlife, and the conduct of full-scale emergency demonstrations. Comments on the proposal were submitted by airport industry trade associations, local and state governments, and private sector organizations. The majority of the comments recommended only technical modifications and clarifications. A number of comments, however, disagreed with the economic impact estimates of various proposals. The FAA has evaluated the public comments and

made a final determination regarding their impact. With one exception, the FAA finds the initial determination of the expected economic impact of the proposals to be the same for the final rule. The exception is the proposal requiring additional fencing for several airports to safeguard against inadvertent entry onto operations areas by all large animals. This requirement has been eliminated as a result of industry comments and subsequent FAA technical assessment.

The FAA finds that with the exception of the optional reduction in the number of firefighting vehicles provided by §§ 139.317 (b)(1) and (2) and 139.317 (c)(1) and (2), and the emergency medical services training requirements of § 139.319 (j)(4), the remaining proposals affecting Part 139 airports will have a negligible cost or no cost impact.

If all 74 of the affected Index B airports disposed of one of their two vehicles, the maximum potential savings under § 139.317 (b)(1) and (2) would have a current value of $9,990,000. The FAA, however, has not been able to determine how many of the 74 airports subject to the firefighting and rescue provisions of Index B will adopt the option provided by this amendment. The FAA, therefore has not estimated the actual benefit that will accrue to Index B airports from this amendment. An undetermined number of Index B airports, however, will realize annualized savings of $135,000 as a result of not being required to maintain and replace one of the two firefighting vehicles required by the current rule.

If all 97 of the affected Index C airports disposed of one of their three vehicles, the maximum potential savings under § 139.317 (c)(1) and (2) would have a current value of $15,520,000. The FAA however, has not been able to determine how many of the 97 airports subject to the firefighting and rescue provisions of Index C will adopt the option provided by this amendment. The FAA, therefore, has not estimated the actual benefit that will accrue to Index C airports from this amendment. An undetermined number of Index C airports, however, will realize annualized individual savings of $160,000 as a result of not being required to maintain and replace one of the three firefighting vehicles required by the current rule.

The cost of requiring at least one person on duty during air carrier operations to be trained in basic emergency medical care will be a one-time cost of $930 or a combined cost of $357,000 on the 384 Index A and limited certificated airports which will be required to train two persons in basic emergency medical services.

The benefits of this rule have not been quantified. Undertermined benefits are expected to accrue to travelers and airport personnel from the provision of emergency medical services in the event of sudden illness or accident. The FAA estimates that for benefits to exceed costs, the proposed rule would have to prevent only one fatality valued at $1,000,000, in 1986 dollars, over the 11 year period following its implementation.

The FAA has determined that these amendments will not have a significant economic impact on a substantial number of small entities. The revision to § 139.317(b) (1) and (2) would affect the 74 airports not complying with the firefighting and rescue provisions of Index B. Since only 16 of these airports are small entities, the revision to § 139.317(b) (1) and (2) would not affect a substantial number of the 74 impacted airports. The rule change to § 139.317(c) (1) and (2) will provide the 97 airports, currently subject to Index C of this part, the option of disposing of one of their three firefighting vehicles. Since only 8 of these airports are small entities, the amendment to § 139.317(c) (1) and (2) would also not affect a substantial number of the 97 impacted airports.

The cost impact of the emergency medical training provisions § 139.319(j)(4) is a one-time cost of $930 per airport. The sum of $930 is less than the annualized threshold of $5,400 established for significant economic impact.

Accordingly, the amendments to Part 139 will not have a significant economic impact on a substantial number of small entities.

The FAA has determined that, because these amendments would only affect airports located in U.S. communities, the sale of foreign products domestically, or the sale of U.S. products or services in foreign countries will not be influenced.

Therefore, it is FAA's opinion that this rule will not eliminate existing, or create additional barriers to the sale of foreign aviation products or services in the United States. FAA also certifies that the rule will not eliminate existing, or create additional barriers to the sale of U.S. aviation products and services in foreign countries.

### Reporting and Recordkeeping

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the new reporting or recordkeeping provisions in this amendment were submitted to the Office of Management and Budget (OMB) and have been approved. This final rule adds the OMB control number assigned to these requirements to the list of control numbers in § 11.101.

### Conclusion

The only cost that will be imposed on airport operators by this final rule is a one-time cost for the training of a limited number of individuals in basic emergency medical care. This cost is expected to total $357,000 for 384 airports. The rule is otherwise expected to have a minimal cost impact.

Therefore, the FAA has determined that this amendment involves a regulation which is not major under Executive Order 12291. However, because of the substantial public interest generated by some subjects, the FAA has determined that this amendment is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

With respect to the cost savings under the final rule, only 16 of the 74 airports affected by § 139.317(b) and only 8 of the 97 airports affected by § 139.317(c) are small entities. The one-time medical training costs of $930 imposed by § 139.319(j)(4) are less than the annualized threshold of $5,400 established for significant impact.

Therefore, it is certified that this amendment would not have a significant economic impact on a substantial number of small entities. A final regulatory evaluation has been prepared and placed in the regulatory docket. A copy may be obtained by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT"**.

### List of Subjects in 14 CFR Part 139

Air carriers, Aircraft, Airports, Airplanes, Air safety, Aviation safety, Air transportation, Helicopters, Heliports, Rotocraft, Safety, Transportation.

### The Amendment

Accordingly, the Federal Aviation Administration revises 14 CFR Part 139, effective January 1, 1988, to read as follows:

## PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CERTAIN AIR CARRIERS

### Subpart A—General

Sec.

Authority: 49 U.S.C. 1354(a) and 1432; 49 U.S.C. section 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

## Subpart A—General

### § 139.1 Applicability.

This part prescribes rules governing the certification and operation of land airports which serve any scheduled or unscheduled passenger operation of an air carrier that is conducted with an aircraft having a seating capacity of more than 30 passengers. This part does not apply to airports at which air carrier passenger operations are conducted only by reason of the airport being designated as an alternate airport.

### § 139.3 Definitions.

The following are definitions of terms as used in this part:

"AFFF" means aqueous film forming foam agent.

"Air carrier" means a person who holds or who is required to hold an air carrier operating certificate issued under this Chapter while operating aircraft having a seating capacity of more than 30 passengers.

"Air carrier aircraft" means an aircraft with a seating capacity of more than 30 passengers which is being operated by an air carrier.

"Air carrier operation" means the takeoff or landing of an air carrier aircraft and includes the period of time from 15 minutes before and until 15 minutes after the takeoff or landing.

"Airport" means as area of land or other hard surface, excluding water, that is used or intended to be used for the landing and takeoff of aircraft, and includes its buildings and facilities, if any.

"Airport operating certificate" means a certificate, issued under this part, for operation of an airport serving scheduled operations of air carriers.

"Average daily departures" means the average number of scheduled departures per day of air carrier aircraft computed on the basis of the busiest 3 consecutive months of the immediately preceding 12 calendar months; except that if the average daily departures are expected to increase, then "average daily departures" may be determined by planned rather than current activity in a manner acceptable to the Administrator.

"Certificate holder" means the holder of an airport operating certificate or a limited airport operating certificate, except that as used in Subpart D "certificate holder" does not mean the holder of a limited airport operating certificate if its airport certification specifications, or this part, do not require compliance with the section in which it is used.

"Heliport" means an airport or an area of an airport used or intended to be used for the landing and takeoff of helicopters.

"Index" means an airport ranking according to the type and quantity of aircraft rescue and firefighting equipment and agent required, determined by the length and frequency of air carrier aircraft served by the airport, as provided in Subpart D of this part.

"Limited airport operating certificate" means a certificate, issued under this part, for the operation of an airport serving unscheduled operations of air carriers.

"Movement area" means the runways, taxiways, and other areas of an airport which are used for taxiing or hover taxiing, air taxiing, takeoff, and landing of aircraft, exclusive of loading ramps and aircraft parking areas.

"Regional Director" means the head of the FAA region in which the airport is located.

"Safety area" means a designated area abutting the edges of a runway or taxiway intended to reduce the risk of damage to an aircraft inadvertently leaving the runway or taxiway.

"Wildlife hazard" means a potential for a damaging aircraft collision with wildlife on or near an airport. As used in this part, "wildlife" includes domestic animals while out of the control of their owners.

### § 139.5 Standards and procedures for compliance with the certification and operations requirements of this part.

Certain requirements prescribed by Subparts C and D of this part must be complied with in a manner acceptable to the Administrator. FAA Advisory Circulars contain standards and procedures that are acceptable to the Administrator for compliance with Subparts C and D. Some of these advisory circulars are referenced in specific sections of this part. The standards and procedures in them, or other standards and procedures approved by the Administrator, may be used to comply with those sections.

## Subpart B—Certification

### § 139.101 Certification requirements: General.

(a) No person may operate a land airport in the United States serving any scheduled passenger operation of an air carrier while operating an aircraft having a seating capacity of more than 30 passengers without or in violation of an airport operating certificate, the applicable provisions of this part, or the approved airport certification manual for that airport.

(b) No person may operate a land airport in the United States serving any unscheduled passenger operation of an air carrier while operating an aircraft having a seating capacity of more than 30 passengers without or in violation of a limited airport operating certificate, the applicable provisions of this part, or the approved airport specifications for that airport.

**§ 139.103 Application for certificate.**

(a) Each applicant for an airport operating certificate or a limited airport operating certificate must submit an application, in a form and in the manner prescribed by the Administrator, to the Regional Director.

(b) The application must be accompanied by two copies of an airport certification manual or airport certification specifications, as appropriate, prepared in accordance with Subpart C of this part..

**§ 139.105 Inspection authority.**

Each applicant for an airport operating certificate or a limited airport operating certificate must allow the Administrator to make any inspections, including unannounced inspections, or tests to determine compliance with—

(a) The Federal Aviation Act of 1958, as amended; and

(b) The requirements of this part.

**§ 139.107 Issuance of certificate.**

(a) An applicant for an airport operating certificate is entitled to a certificate if—

(1) The provisions of § 139.103 of this subpart are met;

(2) The Administrator, after investigation, finds that the applicant is properly and adequately equipped and able to provide a safe airport operating environment in accordance with—

(i) Subpart D of this part, and

(ii) Any limitations which the Administrator finds necessary in the public interest; and

(3) The Administrator approves the airport certification manual.

(b) An applicant for a limited airport operating certificate is entitled to a certificate if—

(1) The provisions of § 139.103 of this subpart are met;

(2) The Administrator, after investigation, finds that the applicant is properly and adequately equipped and able to provide a safe airport operating environment in accordance with—

(i) The provisions of Subpart D listed in § 139.213(a) of this part, and

(ii) Any other provisions of this part and any limitations which the Administrator finds necessary in the public interest; and

(3) The Administrator approves the airport certification specifications.

**§ 139.109 Duration of certificate.**

An airport operating certificate or a limited airport operating certificate issued under this part is effective until it is surrendered by the certificate holder or is suspended or revoked by the Administrator.

**§ 139.111 Exemptions.**

(a) An applicant or a certificate holder may petition the Administrator under § 11.25, Petitions for Rule Making or Exemptions, of this chapter for an exemption from any requirement of this part.

(b) An applicant or a certificate holder, enplaning annually less than one-quarter of 1 percent of the total number of passengers enplaned at all air carrier airports, may petition the Administrator under § 11.25, Petitions for Rule Making or Exemptions, of this chapter for an exemption from all or part of the rescue and firefighting equipment requirements of this part on the grounds that compliance with those requirements is, or would be, unreasonably costly, burdensome, or impractical.

(c) Each petition filed under this section must be submitted in duplicate to the Regional Director.

**§ 139.113 Deviations.**

In emergency conditions requiring immediate action for the protection of life or property, involving the transportation of persons by air carriers, the certificate holder may deviate from any requirement of Subpart D of this part to the extent required to meet that emergency. Each certificate holder who deviates from a requirement under this paragraph shall, as soon as practicable, but not later than 14 days after the emergency, report in writing to the Regional Director stating the nature, extent, and duration of the deviation.

## Subpart C—Airport Certification Manual and Airport Certification Specifications

**§ 139.201 Airport operating certificate: airport certification manual.**

(a) An applicant for an airport operating certificate must prepare, and submit with an application, an airport certification manual for approval by the Administrator. Only those items addressing subjects required for certification under this part shall be included in the airport certification manual.

(b) Except as provided in paragraph (c) of this section, each certificate holder shall comply with an approved airport certification manual that meets the requirements of §§ 139.203 and 139.205.

(c) A certificate holder with an approved airport operations manual on January 1, 1988, may use the manual in lieu of the manual required by paragraph (b) of this section until January 1, 1989. Until the certificate holder has an approved airport certification manual, it shall comply with § 139.207 as if that section applied to its airport operations manual

**§ 139.203 Preparation of airport certification manual.**

(a) Each airport certification manual required by this part shall—

(1) Be typewritten and signed by the airport operator;

(2) Be in a form that is easy to revise;

(3) Have the date of initial approval or approval of the latest revision on each page or item in the manual and include a page revision log; and

(4) Be organized in a manner helpful to the preparation, review, and approval processes.

(b) FAA Advisory Circulars in the 139 series contain standards and procedures for the development of airport certification manuals which are acceptable to the Administrator.

**§ 139.205 Contents of airport certification manual.**

(a) Each airport certification manual required by this part shall include operating procedures, facilities and equipment descriptions, responsibility assignments, and any other information needed by personnel concerned with operating the airport in order to comply with—

(1) The provisions of Subpart D of this part; and

(2) Any limitations which the Administrator finds necessary in the public interest.

(b) In complying with paragraph (a) of this section, the airport certification manual must include at least the following elements:

(1) Lines of succession of airport operational responsibility.

(2) Each current exemption issued to the airport from the requirements of this part.

(3) Any limitations imposed by the Administrator.

(4) A grid map or other means of identifying locations and terrain features on and around the airport which are significant to emergency operations.

(5) The system of runway and taxiway identification.

(6) The location of each obstruction required to be lighted or marked within the airport's area of authority.

(7) A description of each movement area available for air carriers and its safety areas and each road described in § 139.319(k) that serves it.

(8) Procedures for avoidance of interruption or failure during construction work of utilities serving facilities or navaids which support air carrier operations.

(9) Procedures for maintaining the paved areas as required by § 139.305.

(10) Procedures for maintaining the unpaved areas as required by § 139.307.

(11) Procedures for maintaining the safety areas as required by § 139.309.

(12) A description of, and procedures for maintaining, the marking and lighting systems as required by § 139.311.

(13) A snow and ice control plan as required by § 139.313.

(14) A description of the facilities, equipment, personnel, and procedures for meeting the rescue and firefighting requirements in §§ 139.317 and 139.319.

(15) Procedures for complying with the requirements of § 139.321 relating to hazardous substances and materials.

(16) A description of, and procedures for maintaining, the traffic and wind direction indicators required by § 139.323.

(17) An emergency plan as required by § 139.325.

(18) Procedures for conducting the self-inspection program as required by § 139.327.

(19) Procedures for controlling ground vehicles as required by § 139.329.

(20) Procedures for obstruction removal, marking, or lighting as required by § 139.331.

(21) Procedures for protection of navaids as required by § 139.333.

(22) A description of public protection as required by § 139.335.

(23) A wildlife hazard management plan as required by § 139.337.

(24) Procedures for airport condition reporting as required by § 139.339.

(25) Procedures for identifying, marking, and reporting construction and other areas as required by § 139.341.

(26) Any other item which the Administrator finds is necessary in the public interest.

**§ 139.207 Maintenance of airport certification manual.**

Each holder of an airport operating certificate shall—

(a) Keep its airport certification manual current at all times;

(b) Maintain at least one complete and current copy of its approved airport certification manual on the airport;

(c) Furnish the applicable portions of the approved airport certification manual to the airport personnel responsible for their implementation;

(d) Make the copy required by paragraph (b) of this section available for inspection by the Administrator upon request; and

(e) Provide the Administrator with one complete and current copy required by paragraph (b) of this section.

**§ 139.209 Limited airport operating certificate: Airport certification specifications.**

(a) An applicant for a limited airport operating certificate must prepare, and submit with an application, airport certification specifications for approval by the Administrator. Only those items addressing subjects required for certification under this part shall be included in the airport certification specifications.

(b) Except as provided in paragraph (c) of this section, each certificate holder shall comply with the approved airport certification specifications that meet the requirements of §§ 139.211 and 139.213.

(c) A certificate holder with an approved airport operations specification on January 1, 1988, may use those specifications in lieu of the specifications required by paragraph (b) of this section until January 1, 1989. Until the certificate holder has approved airport certification specifications, it shall comply with § 139.215 as if that section applied to its airport operations specifications.

**§ 139.211 Preparation of airport certification specifications.**

(a) Each airport certification specifications required by this part shall—

(1) Be typewritten and signed by the airport operator;

(2) Be in a form that is easy to revise;

(3) Have the date of initial approval or approval of the latest revision on each page or item in the specifications and include a page revision log; and

(4) Be organized in a manner helpful to the preparation, review, and approval processes.

(b) FAA Advisory Circulars in the 139 series contain standards and procedures for the development of airport certification specifications which are acceptable to the Administrator.

**§ 139.213 Contents of airport certification specifications.**

(a) The airport certification specifications required by this part shall include operating procedures, facilities and equipment descriptions, responsibility assignments, and any other information needed by personnel concerned with operating the airport in order to comply with—

(1) The following provisions of Subpart D of this part:

(i) Section 139.301 Inspection authority.

(ii) Section 139.303 Personnel.

(iii) Section 139.305 Paved areas.

(iv) Section 139.307 Unpaved areas.

(v) Section 139.309 Safety areas.

(vi) Section 139.311 Marking and lighting.

(vii) Section 139.339 Airport condition reporting.

(2) Any other provisions of Subpart D of this part, and any limitations, which the Administrator finds necessary in the public interest.

(b) In complying with paragraph (a) of this section, the airport certification specifications shall include at least the following elements:

(1) Lines of succession of airport operational responsibility.

(2) Each current exemption issued to the airport from the requirements of this part.

(3) Any limitations imposed by the Administrator.

(4) The system of runway and taxiway identification.

(5) The location of each obstruction required to be lighted or marked within the airport's area of authority.

(6) A description of each movement area available for air carriers and its safety areas.

(7) Procedures for maintaining the paved areas as required by § 139.305.

(8) Procedures for maintaining the unpaved areas as required by § 139.307.

(9) Procedures for maintaining the safety areas as required by § 139.309.

(10) A description of, and procedures for maintaining, the marking and lighting systems as required by § 139.311.

(11) A description of the facilities, equipment, personnel, and procedures for emergency response to aircraft rescue and firefighting needs.

(12) Procedures for safety in storing and handling of hazardous substances and materials.

(13) A description of, and procedures for maintaining, any traffic and wind direction indicators on the airport.

(14) A description of the procedures used for conducting self-inspections of the airport.

(15) Procedures and responsibilities for airport condition reporting as required by § 139.339.

(16) Procedures for compliance with any other provisions of Subpart D of this part, and any limitations, which the Administrator finds necessary in the public interest.

**§ 139.215 Maintenance of airport certification specifications.**

Each holder of a limited airport operating certificate shall—

(a) Keep its airport certification specifications current at all times;

(b) Maintain at least one complete and current copy of its approved airport certification specifications on the airport;

(c) Furnish the applicable portions of the approved airport certification

specifications to the airport personnel responsible for their implementation;

(d) Make the copy required by paragraph (b) of this section available for inspection by the Administrator upon request; and

(e) Provide the Administrator with one complete and current copy required by paragraph (b) of this section.

**§ 139.217 Amendment of airport certification manual or airport certification specifications.**

(a) The Regional Director may amend any airport certification manual or any airport certification specifications approved under this part, either—

(1) Upon application by the certification holder; or

(2) On the Regional Director's own initiative if the Regional Director determines that safety in air transportation or air commerce and the public interest require the amendment.

(b) An applicant for an amendment to its airport certification manual or its airport certification specifications shall file its application with the Regional Director at least 30 days before the proposed effective date of the amendment, unless a shorter filing period is allowed by that office.

(c) At any time within 30 days after receiving a notice of refusal to approve the application for amendment, the certificate holder may petition the Administrator to reconsider the refusal to amend.

(d) In the case of amendments initiated by the Regional Director, the office notifies the certificate holder of the proposed amendment, in writing, fixing a reasonable period (but not less than 7 days) within which the certificate holder may submit written information, views, and arguments on the amendment. After considering all relevant material presented, the Regional Director notifies the certificate holder of any amendment adopted or rescinds the notice. The amendment becomes effective not less than 30 days after the certificate holder receives notice of it, except that prior to the effective date the certificate holder may petition the Administrator to reconsider the amendment, in which case its effective date is stayed pending a decision by the Administrator.

(e) Notwithstanding the provisions of paragraph (d) of this section, if the Regional Director finds that there is an emergency requiring immediate action with respect to safety in air transportation or air commerce that makes the procedures in this paragraph impractical or contrary to the public interest, the Regional Director may issue an amendment, effective without stay on the date the certificate holder receives notice of it. In such a case, the Regional Director incorporates the finding of the emergency, and a brief statement of the reasons for the finding, in the notice of the amendment. Within 30 days after the issuance of such an emergency amendment, the certificate holder may petition the Administrator to reconsider either the finding of an emergency or the amendment itself or both. This petition does not automatically stay the effectiveness of the emergency amendment.

## Subpart D—Operations

**§ 139.301 Inspection authority.**

Each certificate holder shall allow the Administrator to make any inspections, including unannounced inspections, or tests to determine compliance with this part.

**§ 139.303 Personnel.**

Each certificate holder shall maintain sufficient qualified personnel to comply with the requirements of its airport certification manual or airport certification specifications and the applicable rules of this part.

**§ 139.305 Paved areas.**

(a) Each certificate holder shall maintain, and promptly repair the pavement of, each runway, taxiway, loading ramp, and parking area on the airport which is available for air carrier use as follows:

(1) The pavement edges shall not exceed 3 inches difference in elevation between abutting pavement sections and between full strength pavement and abutting shoulders.

(2) The pavement shall have no hole exceeding 3 inches in depth nor any hole the slope of which from any point in the hole to the nearest point at the lip of the hole is 45 degrees or greater as measured from the pavement surface plane, unless, in either case, the entire area of the hole can be covered by a 5-inch diameter circle.

(3) The pavement shall be free of cracks and surface variations which could impair directional control of air carrier aircraft.

(4) Except as provided in paragraph (b) of this section, mud, dirt, sand, loose aggregate, debris, foreign objects, rubber deposits, and other contaminants shall be removed promptly and as completely as practicable.

(5) Except as provided in paragraph (b) of this section, any chemical solvent that is used to clean any pavement area shall be removed as soon as possible, consistent with the instructions of the manufacturer of the solvent.

(6) The pavement shall be sufficiently drained and free of depressions to prevent ponding that obscures markings or impairs safe aircraft operations.

(b) Paragraphs (a)(4) and (a)(5) of this section do not apply to snow and ice accumulations and their control, including the associated use of materials such as sand and deicing solutions.

(c) FAA Advisory Circulars in the 150 series contain standards and procedures for the maintenance and configuration of paved areas which are acceptable to the Administrator.

**§ 139.307 Unpaved areas.**

(a) Each certificate holder shall maintain and promptly repair the surface of each gravel, turf, or other unpaved runway, taxiway, or loading ramp and parking area on the airport which is available for air carrier use as follows:

(1) No slope from the edge of the full-strength surfaces downward to the existing terrain shall be steeper than 2:1.

(2) The full-strength surfaces shall have adequate crown or grade to assure sufficient drainage to prevent ponding.

(3) The full-strength surfaces shall be adequately compacted and sufficiently stable to prevent rutting by aircraft, or the loosening or buildup of surface material which could impair directional control of aircraft or drainage.

(4) The full-strength surfaces must have no holes or depressions which exceed 3 inches in depth and are of a breadth capable of impairing directional control or causing damage to an aircraft.

(5) Debris and foreign objects shall be promptly removed from the surface.

(b) Standards and procedures for the maintenance and configuration of unpaved full-strength surfaces shall be included in the airport certification manual or the airport certification specifications, as appropriate, for compliance with this section.

**§ 139.309 Safety areas.**

(a) To the extent practicable, each certificate holder shall provide and maintain for each runway and taxiway which is available for air carrier use—

(1) If the runway or taxiway had a safety area on December 31, 1987, and if no reconstruction or significant expansion of the runway or taxiway was begun on or after January 1, 1988, a safety area of at least the dimensions that existed on December 31, 1987; or

(2) If construction, reconstruction, or significant expansion of the runway or taxiway began on or after January 1, 1988, a safety area which conforms to the dimensions acceptable to the

Administrator at the time construction, reconstruction, or expansion began.

(b) Each certificate holder shall maintain its safety areas as follows:

(1) Each safety area shall be cleared and graded, and have no potentially hazardous ruts, humps, depressions, or other surface variations.

(2) Each safety area shall be drained by grading or storm sewers to prevent water accumulation.

(3) Each safety area shall be capable under dry conditions of supporting snow removal equipment, and aircraft rescue and firefighting equipment, and supporting the occasional passage of aircraft without causing major damage to the aircraft.

(4) No object may be located in any safety area, except for objects that need to be located in a safety area because of their function. These objects shall be constructed, to the extent practical, on frangibly mounted structures of the lowest practical height with the frangible point no higher than 3 inches above grade.

(c) FAA Advisory Circulars in the 150 series contain standards and procedures for the configuration and maintenance of safety areas acceptable to the Administrator.

**§ 139.311 Marking and lighting.**

(a) Each certificate holder shall provide and maintain at least the following marking systems for air carrier operations on the airport:

(1) Runway markings meeting the specifications for the approach with the lowest minimums authorized for each runway.

(2) Taxiway centerline and edge markings.

(3) Signs identifying taxiing routes on the movement area.

(4) Runway holding position markings and signs.

(5) ILS critical area markings and signs.

(b) Each certificate holder shall provide and maintain, when the airport is open during hours of darkness or during conditions below VFR minimums, at least the following lighting systems for air carrier operations on the airport:

(1) Runway lighting meeting the specifications for the approach with the lowest minimums authorized for each runway.

(2) One of the following taxiway lighting systems:

(i) Centerline lights.

(ii) Centerline reflectors.

(iii) Edge lights.

(iv) Edge reflectors.

(3) An airport beacon.

(4) Approach lighting meeting the specifications for the approach with the lowest minimums authorized for each runway, unless otherwise provided and maintained by the FAA or another agency.

(5) Obstruction marking and lighting, as appropriate, on each object within its authority which constitutes an obstruction under Part 77 of this chapter. However, this lighting and marking is not required if it is determined to be unnecessary by an FAA aeronautical study.

(c) Each certificate holder shall properly maintain each marking or lighting system installed on the airport which is owned by the certificate holder. As used in this section, to "properly maintain" includes: To clean, replace, or repair any faded, missing, or nonfunctional item of lighting; to keep each item unobscured and clearly visible; and to ensure that each item provides an accurate reference to the user.

(d) Each certificate holder shall ensure that all lighting on the airport, including that for aprons, vehicle parking areas, roadways, fuel storage areas, and buildings, is adequately adjusted or shielded to prevent interference with air traffic control and aircraft operations.

(e) FAA Advisory Circulars in the 150 series contain standards and procedures for equipment, material, installation, and maintenance of light systems and marking listed in this section which are acceptable to the Administrator.

**§ 139.313 Snow and ice control.**

(a) Each certificate holder whose airport is located where snow and icing conditions regularly occur shall prepare, maintain, and carry out a snow and ice control plan.

(b) The snow and ice control plan required by this section shall include instructions and procedures for—

(1) Prompt removal or control, as completely as practical, of snow, ice, and slush on each movement area;

(2) Positioning snow off of movement area surfaces so that all air crarrier aircraft propellers, engine pods, rotors, and wingtips will clear any snowdraft and snowbank as the aircraft's landing gear traverses any full strength portion of the movement area;

(3) Selection and application of approved materials for snow and ice control to ensure that they adhere to snow and ice sufficiently to minimize engine ingestion;

(4) Timely commencement of snow and ice control operations; and

(5) Prompt notification, in accordance with § 139.339, of all air carriers using the airport when any portion of the movement area normally available to them is less than satisfactorily cleared for safe operation by their aircraft.

(c) FAA Advisory Circulars in the 150 series contain standards for snow and ice control equipment, materials, and procedures for snow and ice control which are acceptable to the Administrator.

**§ 139.315 Aircraft rescue and firefighting: Index determination.**

(a) An Index is required by paragraph (c) of this section for each certificate holder. The Index is determined by a combination of—

(1) The length of air carrier aircraft expressed in groups; and

(2) Average daily departures of air carrier aircraft.

(b) For the purpose of Index determination, air carrier aircraft lengths are grouped as follows:

(1) Index A includes aircraft less than 90 feet in length.

(2) Index B includes aircraft at least 90 feet but less than 126 feet in length.

(3) Index C includes aircraft at least 126 feet but less than 159 feet in length.

(4) Index D includes aircraft at least 159 feet but less than 200 feet in length.

(5) Index E includes aircraft at least 200 feet in length.

(c) Except as provided in § 139.319(c), the Index required by § 139.319 is determined as follows:

(1) If there are five or more average daily departures of air carrier aircraft in a single Index group serving that airport, the longest Index group with an average of 5 or more daily departures is the Index required for the airport.

(2) If there are less than five average daily departures of air carrier aircraft in a single Index group serving that airport, the next lower Index from the longest Index group with air carrier aircraft in it is the Index required for the airport. The minimum designated Index shall be Index A.

**§ 139.317 Aircraft rescue and firefighting: Equipment and agents.**

The following rescue and firefighting equipment and agents are the minimum required for the Indexes referred to in § 139.315:

(a) *Index A:* One vehicle carrying at least—

(1) 500 pounds of sodium-based dry chemical or halon 1211; or

(2) 450 pounds of potassium-based dry chemical and water with a commensurate quantity of AFFF to total 100 gallons, for simultaneous dry chemical and AFFF foam application.

(b) *Index B:* Either of the following:

(1) One vehicle carrying at least 500 pounds of sodium-based dry chemical or

halon 1211, and 1,500 gallons of water, and the commensurate quantity of AFFF for foam production.

(2) Two vehicles—

(i) One vehicle carrying the extinguishing agents as specified in paragraph (a)(1) or (2) of this section; and

(ii) One vehicle carrying an amount of water and the commensurate quantity of AFFF so that the total quantity of water for foam production carried by both vehicles is at least 1,500 gallons.

(c) *Index C:* Either of the following:

(1) Three vehicles—

(i) One vehicle carrying the extinguishing agents as specified in paragraph (a)(1) or (2) of this section; and

(ii) Two vehicles carrying an amount of water and the commensurate quantity of AFFF so that the total quantity of water for foam production carried by all three vehicles is at least 3,000 gallons.

(2) Two vehicles—

(i) One vehicle carrying the extinguishing agents as specified in paragraph (b)(1) of this section; and

(ii) One vehicle carrying water and the commensurate quantity of AFFF so that the total quantity of water for foam production carried by both vehicles is at least 3,000 gallons.

(d) *Index D:* Three vehicles—

(1) One vehicle carrying the extinguishing agents as specified in paragraph (a)(1) or (2) of this section; and

(2) Two vehicles carrying an amount of water and the commensurate quantity of AFFF so that the total quantity of water for foam production carried by all three vehicles is at least 4,000 gallons.

(e) *Index E:* Three vehicles—

(1) One vehicle carrying the extinguishing agents as specified in paragraph (a)(1) or (2) of this section; and

(2) Two vehicles carrying an amount of water and the commensurate quantity of AFFF so that the total quantity of water for foam production carried by all three vehicles is at least 6,000 gallons.

(f) Notwithstanding the provisions of paragraphs (a) through (e) of this section, any certificate holder whose vehicles met the requirements of this part for quantity and type of extinguishing agent on January 1, 1988, may comply with the Index requirements of this section by carrying extinguishing agents to the full capacity of those vehicles. Whenever any of those vehicles is replaced or rehabilitated, the capacity of the replacement or rehabilitated vehicle shall be sufficient to comply with the requirements of the required Index.

(g) *Foam discharge capacity.* Each aircraft rescue and firefighting vehicle used to comply with Index B, C, D, or E requirements with a capacity of at least 500 gallons of water for foam production shall be equipped with a turret. Vehicle turret discharge capacity shall be as follows:

(1) Each vehicle with a minimum rated vehicle water tank capacity of at least 500 gallons but less than 2,000 gallons shall have a turret discharge rate of at least 500 gallons per minute but not more than 1,000 gallons per minute.

(2) Each vehicle with a minimum rated vehicle water tank capacity of at least 2,000 gallons shall have a turret discharge rate of at least 600 gallons per minute but not more than 1,200 gallons per minute.

(3) Notwithstanding the requirements of paragraph (g) of this section, any certificate holder whose aircraft rescue and firefighting vehicles are not equipped with turrets or do not have the discharge capacity required in this section, but otherwise meet the requirements of this part on January 1, 1988, need not comply with paragraph (g) of this section for a particular vehicle until that vehicle is replaced or rehabilitated.

(h) *Dry chemical and halon 1211 discharge capacity.* Each aircraft rescue and firefighting vehicle which is required to carry dry chemical or halon 1211 for compliance with the index requirements of this section must meet one of the following minimum discharge rates for the equipment installed:

(1) Dry chemical or halon 1211 through a hand line, 5 pounds per second.

(2) Dry chemical or halon 1211 through a turret, 16 pounds per second.

(i) *Extinguishing agent substitutions.* The following extinguishing agent substitutions may be made:

(1) Protein or fluoroprotein foam concentrates may be substituted for AFFF. When either of these substitutions is selected, the volume of water to be carried for the substitute foam production shall be calculated by multiplying the volume of water required for AFFF by the factor 1.5.

(2) Sodium- or potassium-based dry chemical or halon 1211 may be substituted for AFFF. Up to 30 percent of the amount of water specified for AFFF production may be replaced by dry chemical or halon 1211, except that for airports where such extreme climatic conditions exist that water is either unmanageable or unobtainable, as in arctic or desert regions, up to 100 percent of the required water may be replaced by dry chemical or halon 1211. When this substitution is selected, 12.7 pounds of dry chemical or halon 1211 shall be substituted for each gallon of water used for AFFF foam production.

(3) Sodium or potassium-based dry chemical or halon 1211 may be substituted for protein or fluoroprotein foam. When this substitution is selected, 8.4 pounds of dry chemical or halon 1211 shall be substituted for one gallon of water for protein or fluoroprotein foam production.

(4) AFFF may be substituted for dry chemical or halon 1211. For airports where meteorological conditions, such as consistently high winds and precipitation, would frequently prevent the effective use of dry chemical or halon 1211, up to 50 percent of these agents may be replaced by water for AFFF production. When this substitution is selected, one gallon of water for foam production with the commensurate quantity of AFFF shall be substituted for 12.7 pounds of dry chemical or halon 1211.

(5) Potassium-based dry chemical may be substituted for sodium-based dry chemical. Where 500 pounds of sodium-based dry chemical is specified, 450 pounds of potassium-based dry chemical may be substituted.

(6) Other extinguishing agent substitutions acceptable to the Administrator may be made in amounts that provide equivalent firefighting capability.

(j) In addition to the quantity of water required, each vehicle required to carry AFFF shall carry AFFF in an appropriate amount to mix with twice the water required to be carried by the vehicle.

(k) FAA Advisory Circulars in the 150 series contain standards and procedures for AFFF equipment and agents which are acceptable to the Administrator.

**§ 139.319 Aircraft rescue and firefighting: Operational requirements.**

(a) Except as provided in paragraph (c) of this section, each certificate holder shall provide on the airport, during air carrier operations at the airport, at least the rescue and firefighting capability specified for the Index required by § 139.317.

(b) *Increase in Index.* Except as provided in paragraph (c) of this section, if an increase in the average daily departures or the length of air carrier aircraft results in an increase in the Index required by paragraph (a) of this section, the certificate holder shall comply with the increased requirements.

(c) *Reduction in rescue and firefighting.* During air carrier operations with only aircraft shorter than the Index aircraft group required by paragraph (a) of this section, the certificate holder

may reduce the rescue and firefighting to a lower level corresponding to the Index group of the longest air carrier aircraft being operated.

(d) Any reduction in the rescue and firefighting capability from the Index required by paragraph (a) of this section in accordance with paragraph (c) of this section shall be subject to the following conditions:

(1) Procedures for, and the persons having the authority to implement, the reductions must be included in the airport certification manual.

(2) A system and procedures for recall of the full aircraft rescue and firefighting capability must be included in the airport certification manual.

(3) The reductions may not be implemented unless notification to air carriers is provided in the Airport/Facility Directory or Notices to Airmen (NOTAM), as appropriate, and by direct notification of local air carriers.

(e) *Vehicle communications.* Each vehicle required under § 139.317 shall be equipped with two-way voice radio communications which provides for contact with at least—

(1) Each other required emergency vehicle;

(21) The air traffic control tower, if it is located on the airport; and

(3) Other stations, as specified in the airport emergency plan.

(f) *Vehicle marking and lighting.* Each vehicle required under § 139.317 shall—

(1) Have a flashing or rotating beacon; and

(2) Be painted or marked in colors to enhance contrast with the background environment and optimize daytime and nighttime visibility and identification.

(g) FAA Advisory Circulars in the 150 series contain standards for painting, marking and lighting vehicles used on airports which are acceptable to the Administrator.

(h) *Vehicle readiness.* Each vehicle required under § 139.317 shall be maintained as follows:

(1) The vehicle and its systems shall be maintained so as to be operationally capable of performing the functions required by this subpart during all air carrier operations.

(2) If the airport is located in a geographical area subject to prolonged temperatures below 33 degrees Fahrenheit, the vehicles shall be provided with cover or other means to ensure equipment operation and discharge under freezing conditions.

(3) Any required vehicle which becomes inoperative to the extent that it cannot perform as required by § 139.319(h)(1) shall be replaced immediately with equipment having at least equal capabilities. If replacement equipment is not available immediately, the certificate holder shall so notify the Regional Director and each air carrier using the airport in accordance with § 139.339. If the required Index level of capability is not restored within 48 hours, the airport operator, unless otherwise authorized by the Administrator, shall limit air carrier operations on the airport to those compatible with the Index corresponding to the remaining operative rescue and firefighting equipment.

(i) *Response requirements.* (1) Each certificate holder, with the airport rescue and firefighting equipment required under this part and the number of trained personnel which will assure an effective operation, shall—

(i) Respond to each emergency during periods of air carrier operations; and

(ii) When requested by the Administrator, demonstrate compliance with the response requirements specified in this section.

(2) The response required by paragraph (i)(1)(ii) of this section shall achieve the following performance:

(i) Within 3 minutes from the time of the alarm, at least one required airport rescue and firefighting vehicle shall reach the midpoint of the farthest runway serving air carrier from its assigned post, or reach any other specified point of comparable distance on the movement area which is available to air carriers, and begin application of foam, dry chemical, or halon 1211.

(ii) Within 4 minutes from the time of alarm, all other required vehicles shall reach the point specified in paragraph (i)(2)(i) of this section from their assigned post and begin application of foam, dry chemical, or halon 1211.

(j) *Personnel.* Each certificate holder shall ensure the following:

(1) All rescue and firefighting personnel are equipped in a manner acceptable to the Administrator with protective clothing and equipment needed to perform their duties.

(2) All rescue and firefighting personnel are properly trained to perform their duties in a manner acceptable to the Administrator. The training curriculum shall include initial and recurrent instruction in at least the following areas:

(i) Airport familiarization.

(ii) Aircraft familiarization.

(iii) Rescue and firefighting personnel safety.

(iv) Emergency communications systems on the airport, including fire alarms.

(v) Use of the fire hoses, nozzles, turrets, and other appliances required for compliance with this part.

(vi) Application of the types of extinguishing agents required for compliance with this part.

(vii) Emergency aircraft evacuation assistance.

(viii) Firefighting operations.

(ix) Adapting and using structural rescue and firefighting equipment for aircraft rescue and firefighting.

Aircraft cargo hazards

(x) Familiarization with firefighters' duties under the airport emergency plan.

(xi) Familiarization with firefighters' duties under the airport emergency plan.

(3) All rescue and firefighting personnel participate in at least one live-fire drill every 12 months.

(4) At least one of the required personnel on duty during air carrier operations has been trained and is current in basic emergency medical care. This training shall include 40 hours covering at least the following areas:

(i) Bleeding.

(ii) Cardiopulmonary resuscitation.

(iii) Shock.

(iv) Primary patient survey.

(v) Injuries to the skull, spine, chest, and extremities.

(vi) Internal injuries.

(vii) Moving patients.

(viii) Burns.

(ix) Triage.

(5) Sufficient rescue and firefighting personnel are available during all air carrier operations to operate the vehicles, meet the response times, and meet the miminum agent discharge rates required by this part;

(6) Procedures and equipment are established and maintained for alerting rescue and firefighting personnel by siren, alarm, or other means acceptable to the Administrator, to any existing or impending emergency requiring their assistance.

(k) *Emergency access roads.* Each certificate holder shall ensure that roads which are designated for use as emergency access roads for aircraft rescue and firefighting vehicles are maintained in a condition that will support those vehicles during all-weather conditions.

**§ 139.321 Handling and storing of hazardous substances and materials.**

(a) Each certificate holder which acts as a cargo handling agent shall establish and maintain procedures for the protection of persons and property on the airport during the handling and storing of any material regulated by the Hazardous Materials Regulations (49 CFR Part 171, et seq.), that is, or is

intended to be, transported by air. These procedures shall provide for at least the following:

(1) Designated personnel to receive and handle hazardous substances and materials.

(2) Assurance from the shipper that the cargo can be handled safely, including any special handling procedures required for safety.

(3) Special areas for storage of hazardous materials while on the airport.

(b) Each certificate holder shall establish and maintain standards acceptable to the Administrator for protecting against fire and explosions in storing, dispensing, and otherwise handling fuel, lubricants, and oxygen (other than articles and materials that are, or are intended to be, aircraft cargo) on the airport. These standards shall cover facilities, procedures, and personnel training and shall address at least the following:

(1) Grounding and bonding.

(2) Public protection.

(3) Control of access to storage areas.

(4) Fire safety in fuel farm and storage areas.

(5) Fire safety in mobile fuelers, fueling pits, and fueling cabinets.

(6) Training of fueling personnel in fire safety in accordance with paragraph (e) of this section.

(7) The fire code of the public body having jurisdiction over the airport.

(c) Each certificate holder shall, as a fueling agent comply with and except as provided in paragraph (h) of this section required all other fueling agents operating on the airport to comply with, the standards established under paragraph (b) of this section and shall perform reasonable surveillance of all fueling activities on the airport with respect to those standards.

(d) Each certificate holder shall inspect the physical facilities of each airport tenant fueling agent at least once every 3 months for compliance with paragraph (b) of this section and maintain a record of that inspection for at least 12 months. The certificate holder may use an independent organization to perform this inspection if—

(1) It is acceptable by the Administrator; and

(2) It prepares a record of its inspection sufficiently detailed to assure the certificate holder and the FAA that the inspection is adequate.

(e) The training required in paragraph (b)(6) of this section shall include at least the following:

(1) At least one supervisor with each fueling agent shall have completed an aviation fuel training course in fire safety which is acceptable to the Administrator.

(2) All other employees who fuel aircraft, accept fuel shipments, or otherwise handle fuel shall receive at least on-the-job training in fire safety from the supervisor trained in accordance with paragraph (e)(1) of this section.

(f) Each certificate holder shall obtain certification once a year from each airport tenant fueling agent that the training required by paragraph (e) of this section has been accomplished.

(g) Unless otherwise authorized by the Administrator, each certificate holder shall require each tenant fueling agent to take immediate corrective action whenever the certificate holder becomes aware of noncompliance with a standard required by paragraph (b) of this section. The certificate holder shall notify the appropriate FAA Regional Director immediately when noncompliance is discovered and corrective action cannot be accomplished within a reasonable period of time.

(h) A certificate holder need not require an air carrier operating under Part 121 or Part 135 of this chapter to comply with the standards required by paragraph (b)(6) of this section.

(i) FAA Advisory Circulars in the 150 Series contain standards and procedures for the handling and storage of hazardous substances and materials which are acceptable to the Administrator.

**§ 139.323 Traffic and wind direction indicators.**

Each certificate holder shall provide the following on its airport:

(a) A wind cone that provides surface wind direction information visually to pilots. For each airport in a terminal control area, supplemental wind cones shall be installed at each runway end or at least at one point visible to the pilot while on final approach and prior to takeoff. If the airport is open for air carrier operations during hours of darkness, the wind direction indicators must be lighted.

(b) For airports serving any air carrier operation when there is no control tower operating, a segmented circle around one wind cone and a landing strip and traffic pattern indicator for each runway with a right-hand traffic pattern.

**§ 139.325 Airport emergency plan.**

(a) Each certificate holder shall develop and maintain an airport emergency plan designed to minimize the possibility and extent of personal injury and property damage on the airport in an emergency. The plan must include—

(1) Procedures for prompt response to all of the emergencies listed in paragraph (b) of this section, including a communications network; and

(2) Sufficient detail to provide adequate guidance to each person who must implement it.

(b) The plan required by this section must contain instructions for response to—

(1) Aircraft incidents and accidents;

(2) Bomb incidents, including designated parking areas for the aircraft involved;

(3) Structural fires;

(4) Natural disaster;

(5) Radiological incidents;

(6) Sabotage, hijack incidents, and other unlawful interference with operations;

(7) Failure of power for movement area lighting; and

(8) Water rescue situations.

(c) The plan required by this section must address or include—

(1) To the extent practicable, provisions for medical services including transportation and medical assistance for the maximum number of persons that can be carried on the largest air carrier aircraft that the airport reasonably can be expected to serve;

(2) The name, location, telephone number, and emergency capability of each hospital and other medical facility, and the business address and telephone number of medical personnel on the airport or in the communities it serves, agreeing to provide medical assistance or transportation;

(3) The name, location, and telephone number of each rescue squad, ambulance service, military installation, and government agency on the airport or in the communities it serves, that agrees to provide medical assistance or transportation;

(4) An inventory of surface vehicles and aircraft that the facilities, agencies, and personnel included in the plan under paragraphs (c)(2) and (c)(3) of this section will provide to transport injured and deceased persons to locations on the airport and in the communities it serves;

(5) Each hangar or other building on the airport or in the communities it serves that will be used to accommodate uninjured, injured, and deceased persons;

(6) Crowd control, specifying the name and location of each safety or security agency that agrees to provide assistance for the control of crowds in

the event of an emergency on the airport;

(7) The removal of disabled aircraft including to the extent practical the name, location and telephone numbers of agencies with aircraft removal responsibilities or capabilities; and

(d) The plan required by this section must provide for—

(1) The marshalling, transportation, and care of ambulatory injured and uninjured accident survivors;

(2) The removal of disabled aircraft;

(3) Emergency alarm systems; and

(4) Coordination of airport and control tower functions relating to emergency actions.

(e) The plan required by this section shall contain procedures for notifying the facilities, agencies, and personnel who have responsibilities under the plan of the location of an aircraft accident, the number of persons involved in that accident, or any other information necessary to carry out their responsibilities, as soon as that information is available.

(f) The plan required by this section shall contain provisions, to the extent practicable, for the rescue of aircraft accident victims from significant bodies of water or marsh lands adjacent to the airport which are crossed by the approach and departure flight paths of air carriers. A body of water or marsh land is significant if the area exceeds one-quarter square mile and cannot be traversed by conventional land rescue vehicles. To the extent practicable, the plan shall provide for rescue vehicles with a combined capacity for handling the maximum number of persons that can be carried on board the largest air carrier aircraft that the airport reasonably can be expected to serve.

(g) Each certificate holder shall—

(1) Coordinate its plan with law enforcement agencies, rescue and fire fighting agencies, medical personnel and organizations, the principal tenants at the airport, and all other persons who have responsibilities under the plan;

(2) To the extent practicable, provide for participation by all facilities, agencies, and personnel specified in paragraph (g)(1) of this section in the development of the plan;

(3) Ensure that all airport personnel having duties and responsibilities under the plan are familiar with their assignments and are properly trained;

(4) At least once every 12 months, review the plan with all of the parties with whom the plan is coordinated as specified in paragraph (g)(1) of this section, to ensure that all parties know their responsibilities and that all of the information in the plan is current; and

(5) Hold a full-scale airport emergency plan exercise at least once every 3 years.

(h) FAA Advisory Circulars in the 150 Series contain standards and procedures for the development of an airport emergency plan which are acceptable to the Administrator.

**§ 139.327 Self-inspection program.**

(a) Each certificate holder shall inspect the airport to assure compliance with this subpart—

(1) Daily, except as otherwise required by the airport certification manual or airport certification specifications;

(2) When required by any unusual condition such as construction activities or meteorological conditions that may affect safe air carrier operations; and

(3) Immediately after an accident or incident.

(b) Each certificate holder shall provide the following:

(1) Equipment for use in conducting safety inspections of the airport;

(2) Procedures, facilities, and equipment for reliable and rapid dissemination of information between airport personnel and its air carriers;

(3) Procedures to ensure that qualified inspection personnel perform the inspections; and

(4) A reporting system to ensure prompt correction of unsafe airport conditions noted during the inspection.

(d) Each certificate holder shall prepare and keep for at least 6 months, and make available for inspection by the Administrator on request, a record of each inspection prescribed by this section, showing the conditions found and all corrective actions taken.

(e) FAA Advisory Circulars in the 150 Series contain standards and procedures for the conduct of airport self-inspections which are acceptable to the Administrator.

**§ 139.329 Ground vehicles.**

Each certificate holder shall—

(a) Limit access to movement areas and safety areas only to those ground vehicles necessary for airport operations;

(b) Provide adequate procedures for the safe and orderly access to, and operation on, the movement area and safety areas by ground vehicles;

(c) When an air traffic control tower is in operation, ensure that each ground vehicle operating on the movement area is controlled by one of the following:

(1) Two-way radio communications between each vehicle and the tower;

(2) An escort vehicle with two-way radio communications with the tower to accompany any vehicle without a radio, or

(3) Measures acceptable to the Administrator for controlling vehicles, such as signs, signals, or guards, when it is not operationally practical to have two-way radio communications with the vehicle or an escort vehicle;

(d) When an air traffic control tower is not in operation, provide adequate procedures to control ground vehicles on the movement area through prearranged signs or signals;

(e) Ensure that each employee, tenant, or contractor who operates a ground vehicle on any portion of the airport which has access to the movement area is familiar and complies with the airport's rules and procedures for the operation of ground vehicles; and

(f) On request by the Administrator, make available for inspection any record of accidents or incidents on the movement areas involving air carrier aircraft and/or ground vehicles.

**§ 139.331 Obstructions.**

Each certificate holder shall ensure that each object in each area within its authority which exceeds any of the heights or penetrates the imaginary surfaces described in Part 77 of this chapter is either removed, marked, or lighted. However, removal, marking, and lighting is not required if it is determined to be unnecessary by an FAA aeronautical study.

**§ 139.333 Protection of navaids.**

Each certificate holder shall—

(a) Prevent the construction of facilities on its airport that, as determined by the Administrator, would derogate the operation of an electronic or visual navaid and air traffic control facilities on the airport;

(b) Protect, or if the owner is other than the certificate holder, assist in protecting, all navaids on its airport against vandalism and theft; and

(c) Prevent, insofar as it is within the airport's authority, interruption of visual and electronic signals of navaids.

**§ 139.335 Public protection.**

(a) Each certificate holder shall provide—

(1) Safeguards acceptable to the Administrator to prevent inadvertent entry to the movement area by unauthorized persons or vehicles; and

(2) Reasonable protection of persons and property from aircraft blast.

(b) Fencing meeting the requirements of Part 107 of this chapter in areas subject to that part is acceptable for meeting the requirements of paragraph (a)(1) of this section.

**§ 139.337 Wildlife hazard management.**

(a) Each certificate holder shall provide for the conduct of an ecological study, acceptable to the Administrator, when any of the following events occurs on or near the airport:

(1) An air carrier aircraft experiences a multiple bird strike or engine ingestion.

(2) An air carrier aircraft experiences a damaging collision with wildlife other than birds.

(3) Wildlife of a size or in numbers capable of causing an event described in paragraph (a) (1) or (2) of this section is observed to have access to any airport flight pattern or movement area.

(b) The study required in paragraph (a) of this section shall contain at least the following:

(1) Analysis of the event which prompted the study.

(2) Identification of the species, numbers, locations, local movements, and daily and seasonal occurrences of wildlife observed.

(3) Identification and location of features on and near the airport that attract wildlife.

(4) Description of the wildlife hazard to air carrier operations.

(c) The study required by paragraph (a) of this section shall be submitted to the Administrator, who determines whether or not there is a need for a wildlife hazard management plan. In reaching this determination, the Administrator considers—

(1) The ecological study;

(2) The aeronautical activity at the airport;

(3) The views of the certificate holder;

(4) The views of the airport users; and

(5) Any other factors bearing on the matter of which the Administrator is aware.

(d) When the Administrator determines that a wildlife hazard management plan is needed, the certificate holder shall formulate and implement a plan using the ecological study as a basis. The plan shall—

(1) Be submitted to, and approved by, the Administrator prior to implementation; and

(2) Provide measures to alleviate or eliminate wildlife hazards to air carrier operations.

(e) The plan shall include at least the following:

(1) The persons who have authority and responsibility for implementing the plan.

(2) Priorities for needed habitat modification and changes in land use identified in the ecological study, with target dates for completion.

(3) Requirements for and, where applicable, copies of local, state, and Federal wildlife control permits.

(4) Identification of resources to be provided by the certificate holder for implementation of the plan.

(5) Procedures to be followed during air carrier operations, including at least—

(i) Assignment of personnel responsibilities for implementing the procedures;

(ii) Conduct of physical inspections of the movement area and other areas critical to wildlife hazard management sufficiently in advance of air carrier operations to allow time for wildlife controls to be effective;

(iii) Wildlife control measures; and

(iv) Communication between the wildlife control personnel and any air traffic control tower in operation at the airport.

(6) Periodic evaluation and review of the wildlife hazard management plan for—

(i) Effectiveness in dealing with the wildlife hazard; and

(ii) Indications that the existence of the wildlife hazard, as previously described in the ecological study, should be reevaluated.

(7) A training program to provide airport personnel with the knowledge and skills needed to carry out the wildlife hazard management plan required by paragraph (d) of this section.

(f) Notwithstanding the other requirements of this section, each certificate holder shall take immediate measures to alleviate wildlife hazards whenever they are detected.

(g) FAA Advisory Circulars in the 150 Series contain standards and procedures for wildlife hazard management at airports which are acceptable to the Administrator.

**§ 139.339 Airport condition reporting.**

(a) Each certificate holder shall provide for the collection and dissemination of airport condition information to air carriers.

(b) In complying with paragraph (a) of this section, the certificate holder shall utilize the NOTAM system and, as appropriate, other systems and procedures acceptable to the Administrator.

(c) In complying with paragraph (a) of this section, the certificate holder shall provide information on the following airport conditions which may affect the safe operations of air carriers:

(1) Construction or maintenance activity on movement areas, safety areas, or loading ramps and parking areas.

(2) Surface irregularities on movement areas or loading ramps and parking areas.

(3) Snow, ice, slush, or water on the movement area or loading ramps and parking areas.

(4) Snow piled or drifted on or near movement areas contrary to § 139.313.

(5) Objects on the movement area or safety areas contrary to § 139.309.

(6) Malfunction of any lighting system required by § 139.311.

(7) Unresolved wildlife hazards as identified in accordance with § 139.337.

(8) Nonavailability of any rescue and firefighting capability required in § 39.317 and 139.319.

(9) Any other condition as specified in the airport certification manual or airport certification specifications, or which may otherwise adversely affect the safe operations of air carriers.

(d) FAA Advisory Circulars in the 150 series contain standards and procedures for using the NOTAM system for dissemination of airport information which are acceptable to the Administrator.

**§ 139.341 Identifying, marking, and reporting construction and other unserviceable areas.**

(a) Each certificate holder shall—

(1) Mark and, if appropriate, light in a manner acceptable to the Administrator—

(i) Each construction area and unserviceable area which is on or adjacent to any movement area or any other area of the airport on which air carrier aircraft may be operated;

(ii) Each item of construction equipment and each construction roadway, which may affect the safe movement of aircraft on the airport; and

(iii) Any area adjacent to a navaid that, if traversed, could cause derogation of the signal or the failure of the navaid, and

(2) Provide procedures, such as a review of all appropriate utility plans prior to construction, for avoiding damage to existing utilities, cables, wires, conduits, pipelines, or other underground facilities.

(b) FAA Advisory Circulars in the 150 series contain standards and procedures for identifying and marking construction areas which are acceptable to the Administrator.

**§ 139.343 Noncomplying conditions.**

Unless otherwise authorized by the Administrator, whenever the requirements of Subpart D of this part cannot be met to the extent that uncorrected unsafe conditions exist on the airport, the certificate holder shall limit air carrier operations to those portions of the airport not rendered unsafe by those conditions.

Issued in Washington, DC, on November 9, 1987.

**T. Allan McArtor,**

*Administrator.*

[FR Doc. 87-26419 Filed 11-17-87; 8:45 am]

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Federal Register

Wednesday
November 18, 1987

Part III

# Department of Education

**Research in Education of the Handicapped; Proposed Funding Priorities and Invitation of Applications for New Awards Under the Research in Education of the Handicapped Program for Fiscal Year 1988; Notices**

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.023]**

### Invitation of Applications for New Awards Under the Research in Education of the Handicapped Program for Fiscal Year 1988

*Purpose:* To assist research and related purposes, and to conduct research, surveys, or demonstrations, relating to the education of handicapped children.

*Applicable Regulations:* (a) The Research in Education of the Handicapped Program Regulations, 34 CFR Part 324, (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78, and (c) when adopted in final form, the annual funding priorities for this program. A notice of proposed annual funding priorities is published in this issue of the **Federal Register**. Applicants should prepare their applications based on the proposed priorities. If there are substantive changes made when the final annual funding priorities are published, applicants will be given the opportunity to amend or resubmit their applications.

*Application Available:* December 7, 1987.

RESEARCH PRIORITIES FOR FISCAL YEAR 1988

| Title and CFDA number | Deadline for transmittal of applications | Available funds | Estimated range of awards | Estimated size of awards | Estimated number of awards | Project period in months |
|---|---|---|---|---|---|---|
| School Building Models for Educating Students With Handicaps in General Education Settings (CFDA No. 84.023F1). | Feb. 1, 1988 | $900,000 | $125,000 to $175,000 | $150,000 | 6 | Up to 48. |
| Research for Educating Seriously Emotionally Disturbed Students (CFDA No. 84.023M1). | Feb. 1, 1988 | 1,050,00 | 125,000 to 175,000 | 150,000 | 7 | Up to 36. |

*Contact Person:* Linda Glidewell, U.S. Department of Education, Office of Special Education Programs, Division of Innovation and Development, 400 Maryland Avenue, SW., (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202.

Telephone: (202) 732–1099.

*Program Authority:* 20 U.S.C. 1441—1444.

*Supplementary Information and Requirements:* None.

Dated: October 27, 1987.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87–26532 Filed 11–17–87; 8:45 am]

BILLING CODE 4000–01–M

## Office of Special Education and Rehabilitative Services

## Research in Education of the Handicapped

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed funding priorities.

**SUMMARY:** The Secretary proposes to establish annual funding priorities for the Research in Education of the Handicapped program to ensure effective use of program funds and to direct funds to areas of identified need during fiscal year 1988.

**DATE:** Comments must be received on or before December 18, 1987.

**ADDRESS:** Comments should be addressed to: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Linda Glidewell. Telephone: (202) 732–1099.

**SUPPLEMENTARY INFORMATION:** The Research in Education of the Handicapped program, authorized by Part E of the Education of the Handicapped Act (20 U.S.C. 1441–1444), supports research, surveys, and demonstration projects relating to the educational needs of handicapped children. Under this program, the Secretary makes awards for research and related activities to assist special education personnel, related services personnel, and other appropriate persons, including parents, in improving the education and related services for handicapped children and youth; and to conduct research, surveys, or demonstrations relating to the education of handicapped children and youth. Research and related activities supported under this program must be designed to increase knowledge and understanding of handicapping conditions and services for handicapped children and youth, including physical education or recreation.

### Proposed Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under the Research in Education of the Handicapped program, CFDA No. 84.023, for fiscal year 1988 to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet one of these priorities.

*Priority 1: School Building Models for Educating Students with Handicaps in General Education Settings* (CFDA No. 84.023F1)

This priority supports model projects that develop, implement, and evaluate school building models (models encompassing all classrooms in participating school buildings) for educating all students with handicaps in general education settings. Models must be based on previous research as these projects are intended to build on a growing information base of effective strategies for providing assistance and support to general education classroom teachers, for managing school and classroom organization to provide more effective learning environments, for instruction to meet the needs of heterogeneous groups of learners, and for delivering special education services. Previous efforts, however, have generally examined the effects of a single strategy such as peer tutoring or teacher support teams. The current priority expands this by supporting projects that will select and synthesize multiple strategies into a model that will then be implemented and evaluated.

Projects funded under this priority must include, at minimum, strategies for: (a) Assisting teachers in analyzing and solving instructional and behavioral problems; (b) managing classrooms to maximize academic learning time for students with handicaps and other students; (c) providing appropriate instruction and learning opportunities for students with handicaps, at different academic levels and with heterogeneous instructional and curricula needs; (d) consistently monitoring the progress of

students and adjusting instruction based on the results of monitoring; and (e) appropriately delivering special education and related services designed to meet the unique, individual needs of students with handicaps within general education settings. Projects must also address critical implementation issues such as leadership, parental support, staff training and support, coordination, and provision of appropriate materials and equipment. Projects must develop and evaluate implementation procedures and materials that can be easily transported to other sites.

Applications submitted under this priority must have a conceptual framework for a school building model that includes the research evidence supporting the effectiveness of the specific strategies proposed. Procedures for addressing critical implementation issues must also be described. Finally, applicants shall describe the outcome measures that will be used to evaluate the effectiveness of the model in educating students with handicaps in general education settings, as well as its effectiveness in educating nonhandicapped students. Outcome measures must include student progress in meeting instructional goals and objectives, including the goals and objectives stated in the Individualized Educational Program (IEP); referral rate for placement out of general education settings; academic learning time for both handicapped and nonhandicapped students or the time students are engaged in appropriate learning activities; and staff, parent, and student satisfaction with the comprehensive model and with its outcomes.

*Priority 2: Research for Educating Seriously Emotionally Disturbed Students* (CFDA 84.023M1)

The purpose of this priority is to support research projects that develop and test intervention strategies or components for educating seriously emotionally disturbed (SED) students enrolled at the upper elementary and secondary level. SED students participating in these projects must be selected from general or special education settings, including day or residential programs that are public or private. The intervention strategies must be developed and tested within general education settings, i.e., regular or separate classes or both within general education schools. Regardless of the setting from which the SED students are drawn, it is expected that by the beginning of the final year of the project, the SED students exposed to the intervention strategies will be appropriately integrated within general education programs. Outcome measures for the projects must include indices of the integration of SED youth within programs for which services are provided primarily by or in tandem with general, not special education.

Applications submitted under this priority must provide a conceptual framework, based on previous research, that shows the hypothesized relationships between the intervention variables and the outcome measures included in the proposed research activities. Investigators must research, document, and expand the effective knowledge base for the successful integration of SED youth in general education settings. The intervention components to be developed and tested and the overall conceptual framework must reflect an integrated, comprehensive approach to the delivery of services to SED youth within general education settings and must include strategies for providing the array of special education and related services needed by these students.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding the proposed funding priorities.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in room 3522, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1441–1444)

(Catalog of Federal Domestic Assistance Number 84.023; Research in Education of the Handicapped)

Dated: October 27, 1987.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87–26533 Filed 11–17–87; 8:45 am]

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November 18, 1987

Part IV

# Department of Health and Human Services

## Health Care Financing Administration

42 CFR Parts 405, 442, 488, and 489

Medicare and Medicaid; Survey and Certification of Health Care Facilities; Proposed Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Parts 405, 442, 488, and 489**

**[HSQ-142-P]**

# Medicare and Medicaid; Survey and Certification of Health Care Facilities

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** These proposed regulations would implement certain recommendations made by the National Academy of Sciences' Institute of Medicine (IoM) with which HCFA contracted to study the regulation of nursing homes. Nursing homes include skilled nursing facilities (SNFs) that participate in the Medicare and Medicaid programs and intermediate care facilities (ICFs) that participate in the Medicaid program. This proposed rule must be read in concert with the proposed rule, Conditions of Participation for Long Term Care Facilities, published October 16, 1987 at 52 FR 38582.

This rule would combine in a new Part 488 Medicare and Medicaid survey and certification requirements that affect nursing homes. We would also relocate without modification the Medicare and Medicaid survey and certification process requirements applicable to all providers and suppliers into one place in the Code of Federal Regulations.

These regulations would also—

(1) Establish a flexible survey cycle for SNFs, ICFs, and ICFs/MR in the Medicare and Medicaid programs to ensure the element of surprise during inspections;

(2) Remove references to the surveyor's role as a consultant in order to promote the surveyor's proper role as an investigator and enforcer of Federal requirements.

(3) Provide that for Medicare, survey agency findings of continued compliance constitute a recommendation that is subject to review by HCFA;

(4) Strengthen the requirements affecting participation of facilities with repeat deficiencies;

(5) Establish minimum waiting periods before readmission to the program following termination; and,

(6) Clarify what constitutes an acceptable plan of correction, to whom it must be acceptable, and the length of time allowed for corrections.

**DATES:** Comments will be considered if we receive them at the appropriate address as provided below, no later than 5:00 p.m. on February 16, 1988. We are not requesting comment on the provisions unrelated to nursing homes or ICFs/MR, because no substantive changes are intended. We will, however, consider comments on how we may have inadvertently revised the content of redesignated sections.

**ADDRESSES:** Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-142-P, P.O. Box 26676, Baltimore, Maryland 21207.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

If you prefer, you may deliver your comments to:

Health Care Financing Administration, Room 309-G, Hubert Humphrey Building, 200 Independence Avenue SW., Washington, DC

or

Health Care Financing Administration, Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-142-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC on Monday through Friday of each week from 8:30 a.m. to 5 p.m. ((202) 245-7890).

**FOR FURTHER INFORMATION CONTACT:** Walter Merten, 594-3813.

**SUPPLEMENTARY INFORMATION:**

## I. Background

*Basis in Law and Regulations*

The regulations that establish procedures for the survey and certification of health care facilities have been in effect since 1970 and have remained substantively unchanged since 1974. The Medicare regulations are located in 42 CFR Part 405, Subpart S, and apply to providers (such as hospitals, SNFs, and home health agencies (HHAs)), to suppliers (such as laboratories and portable x-ray suppliers) and to certain practitioners. When these providers, suppliers and practitioners also participate in Medicaid, Medicaid agencies accept the Medicare determinations, hence extensive Medicaid regulations on the qualifications to participate have not been issued. Medicaid regulations are at 42 CFR Part 442, Subpart C, and apply to SNFs, ICFs and ICFs for the mentally retarded (ICFs/MR) that participate in Medicaid.

*Relationship Between Medicare and Medicaid Survey Activities*

Providers and suppliers that want to participate in Medicare or Medicaid apply for participation. For Medicare, survey agencies make recommendations to HCFA as to whether or not a provider or supplier qualifies for participation in the program, but it is HCFA, under authority found in sections 1861, 1864(a), and 1866 of the Act, that makes the determination. For providers and suppliers that participate or seek to participate in Medicaid, however, under authority found in section 1902(a)(33)(B) of the Act, the survey agency, and not the Medicaid agency, makes the participation determination about whether a provider qualifies for participation. Providers and most suppliers approved for participation in the Medicare program also meet the qualifications for participation in the Medicaid program; the State Medicaid agency, however, is not obligated to enter into a provider agreement with Medicare-approved providers or suppliers. When States impose Medicaid requirements that exceed those of Medicare, section 1863 of the Act provides that the higher requirements must be met by Medicare providers in that State.

*Updating Regulations*

In September 1983, HCFA contracted with the National Academy of Sciences' Institute of Medicine (IoM) to study the regulation of nursing homes. In March 1986, the IoM reported its findings and recommendations. The IoM recommended revisions to: (1) Facility requirements (conditions of participation for SNFs and ICFs), and (2) enforcement requirements (survey and certification processes and adverse actions). Our proposal to address the recommendations concerning nursing home facility requirements are addressed in the proposed rule, Conditions of Participation for Long Term Care Facilities, published in the **Federal Register,** October 16, 1987 at 52 FR 38582. Our proposal to address the enforcement requirements, i.e., survey and certification process follows.

## II. Provisions of the Proposed Regulations

The IoM recommendations were numerous and varied. Some would

require statutory changes, some procedural changes, and some reallocation or increase of budget resources. Of those that require changes in the regulations, some relate to topics other than the survey and certification process. The provisions that are described below and that appear as specific proposed rules following this preamble implement only those IoM recommendations that relate directly to the survey and certification process, and that can be implemented by regulation. (At this time, we are not proposing changes in the survey regulations that are beyond the scope of the IoM's recommendations.)

*A. Consolidation of Medicare and Medicaid Survey and Certification Process Requirements*

The major enforcement recommendation we would adopt with this proposed rule is a consolidation of existing Medicare and Medicaid survey, certification, and adverse action requirements for SNFs, presently in 42 CFR Part 405 Subpart S, and for ICFs, presently in 42 CFR Part 442 Subpart C, into a new 42 CFR Part 488. For clarity and ease of use, our consolidation would also bring together in Part 488 survey and certification requirements for all providers, suppliers and certain practitioners making only necessary conforming changes to provisions unrelated to nursing homes or ICFs/MR. While the IoM study explicitly excluded consideration of ICFs/MR, the IoM's enforcement recommendations, if adopted, will affect ICFs/MR, since they constitute a type of ICF service. Therefore, commenters should address how these proposed changes will affect the certification of ICFs/MR.

In our redesignation, we would not include present § 405.1901(g), Civil rights requirements, because existing rules at 45 CFR Parts 80 and 85 apply to any program for which Federal financial assistance is authorized to a recipient under a law administered by the Department. These rules are also referenced at 42 CFR 489.10 and 489.18. We would not include at this time the following sections in Part 442, Subpart C, concerning ICFs/MR because they were proposed for revision on July 25, 1986 at 51 FR 26718. The sections are § 442.113, Extended period for correcting deficiencies: ICFs/MR; Life Safety Code and dining/living/therapy area deficiencies; and § 442.115, Correction plans. We intend to redesignate these sections and incorporate them into Part 488 when we publish the final rule on survey and certification procedures.

We propose that the new Part 488 clearly set forth general provisions affecting survey and certification procedures, the role and responsibilities of the State survey agency, indentify special rules that apply to providers with deficiencies and other special requirements.

*B. Subpart A—General Provisions*

In new §§ 488.1–488.35, we would relocate existing requirements presently found in §§ 405.1901 (a)–(d), and (g), 405.1902(c), 405.1906, 442.101 and 442.111. We are adding a definition of "practitioner" as "a chiropractor or physical therapist in independent practice" to clarify that these individuals, unlike other health care professionals, are subject to requirements that a survey agency must determine. In § 488.25, "Responsibility to provide necessary information," in order to overcome problems with access to needed information during surveys, and to improve the quality of survey findings to support better enforcement as recommended by the IoM, we are directing all providers, suppliers, and practitioners to grant to surveyors access to all parts of a facility at any time, and to records determined necessary by the surveyors to assess compliance with Federal requirements. No other changes are intended. We invite comments on the changes resulting from the IoM recommendation and will consider other comments only when they identify unintended changes resulting from our new presentation of existing sections, or changes that we view as conforming, but others may view as substantive.

*C. Subpart B—Role and Responsibilities of the State Survey Agency*

In new §§ 488.40–488.70, we would relocate existing requirements presently found in §§ 405.1901(e), 405.1902 (b) and (c), 405.1903, 405.1904 (a) and (b), 405.1905(a) and 405.1906. Again, unless identified below as a change resulting from our evaluation of an IoM recommendation, any substantive changes resulting from our relocation and restatement of existing provisions is inadvertent. Consequently, we will consider comments only on changes resulting from the IoM recommendation or unintended consequences of our re-presentation of current material.

Survey Agency Personnel as Consultants

Present 42 CFR 405.1903 states, in part, that the State agency surveyor must document all consultation he or she provides to the provider. In addition, the surveyor must document the provider's response regarding improvements the provider must make to comply with Federal requirements. The IoM recommended that HCFA revise its guidelines to specify that survey agency personnel are not to be used as consultants to providers with compliance problems.

Accordingly to IoM, the Federal survey process should be characterized as an inspection and enforcement process. The surveyor's responsibility is to ascertain, through survey, whether a facility complies with the Medicare or Medicaid regulations. In doing so, the surveyor is required to cite and document all deficiencies that exist at the time of the survey. The surveyor is also expected to followup with the provider or supplier to insure that action in accordance with the plan or correction is promptly completed. Therefore, the surveyor serves as a reporter who collects information about the facility and reports it as objectively as possible. We expect the surveyor to communicate clearly to the provider or supplier the specific provisions of the regulations not met and the reason(s) the surveyor made this decision. We do not believe that the surveyor, on the basis of a two- to three-day survey, should be held responsible by the provider for educating, counseling and assisting staff to improve the quality of services it provides by trying to determine what caused the problem which led to a deficiency. Moreover, we believe that the provider, having been informed of the deficiency and the provision that it violates, should develop a plan of correction that will effectively remedy the problem at the lowest cost. We do not believe that a surveyor should prescribe a plan to a provider or spend extra time in the facility. The surveyor is there to identify the strengths and shortcomings of a facility, not to establish a private consultative relationship. Therefore, in new § 488.40, Survey agency: Responsibilities and actions, we do not refer to consultation.

Timing of Surveys

The IoM made several recommendations concerning the timing of surveys. They recommended that surveyors maximize the element of surprise. Further, the standard annual survey should be conducted somewhere between 9 and 15 months after the previous annual survey, with the average of all facilities within each State remaining at 12 months. Additional standard surveys should take place whenever there are key events, such as a change in ownership. Independent of the survey cycle, all facilities should be required to pass

rigorous life safety and food inspections at regular intervals.

Current Medicare and Medicaid regulations at §§ 405.1904(a), 489.15 and 442.110 require or have the effect of requiring the survey agency to review care provided by providers and suppliers at least annually. Associated with this requirement are the time limited agreement (TLA), in §§ 405.1908 and 442.16 and the automatic cancellation clause, in § 489.16. We agree with the IoM that mandatory annual surveys are predictable and, as such, defeat our longstanding policy of unannounced surveys. We believe that an expansion of the survey cycle would make surveys less predictable and that survey cycle flexibility would enable both HCFA and the State survey agencies to allocate better their human and financial resources. Therefore, we believe that SNFs, ICFs and ICFs/MR with a good compliance history should be surveyed less frequently than those with a marginal compliance history. Although the intent is not to reward or penalize, but rather enforce compliance, the effect may be to reward compliant providers with fewer surveys and to detect and monitor more closely non-compliant providers. Extended survey cycles notwithstanding, we believe that facilities should be surveyed as frequently as necessary to ensure continued compliance with program requirements.

In § 488.60, we would institute a flexible survey cycle for SNFs and ICFs. We would include ICFs/MR in this proposal because ICF services in the Act include services of ICFs/MR. (Again, changes that might be in order for other providers and suppliers are outside the scope of this proposal.) We are presenting two alternative proposals for the flexible survey cycle. The first is based on the IoM-recommended time frames, and would include unannounced surveys as follows: For facilities with good compliance histories, involving very few if any deficiencies, surveys would occur at least every 15 months; and for facilities with marginal compliance histories, with periodic deficiencies, surveys would occur at least every 9 months, with the average of all facilities within each State remaining at 12 months.

The second alternative for the flexible survey cycle would involve the survey of SNFs, ICFs, and ICFs-MR on an unannounced basis, as follows. The survery would be performed: Not less frequently than every 24 months for facilities with no deficiencies; not less frequently than every 18 months for facilities with a deficiency in any standard other than a standard in the quality of care condition; not less frequently than every 9 months for facilities that had a deficiency in a condition of participation other than quality of care, but which took corrective action so that termination was not necessary; and not less frequently than every 6 months for facilities that took corrective action so that termination was not necessary, having any deficiencies in the standards under the quality of care condition in § 483.25 or active treatment requirements under Part 442 Subpart G. It is important to note that the prolonged survey intervals in the cycle of a compliant facility would be discontinued if complaints against that facility were to be substantiated based on complaint investigations, Federal surveys or other State actions.

We expanded the IoM recommendations in developing the second proposal in an effort to provide both more flexibility in timeframes and more specificity of criteria on which the flexible survey cycle is determined. We also wanted to generate as much public comment as possible to assist us in setting our policy in the final regulation. For example, while some may view the extended survey cycle with the belief that facilities will be uninspected for excessive periods of time, others recognize that State licensing and inspection of care activities require surveyors to be in each facility on a routine basis at different times throughout the year.

We are particularly interested in receiving public comments on the length of the survey cycles in each option (and any other) in relation to a facility's compliance history. The public may offer comments on whether even shorter cycles be applied to facilities with poor compliance histories, and whether more specific criteria should be applied in the first option in determining what constitutes poor, marginal or good compliance history (e.g., criteria associated with poor resident outcomes, as well as number of deficiencies found).

The 1972 amendments to the Social Security Act (Pub. L. 92-603) amended section 1866(a)(1) to require that the duration of a Medicare provider agreement with a SNF not exceed 12 months. The agreement may be extended for 2 additional months as long as this does not jeopardize the health and safety of patients, if we determine that it is necessary to prevent irreparable harm to a facility or hardship to a patient, or if additional time is needed to determine whether or not a facility is complying with program requirements. In order to have uniform procedures for both programs, the requirement for TLAs was extended by regulations to SNFs and ICFs under Medicaid.

In 1981, Congress enacted section 2153 of Pub. L. 97-35 which amended section 1866(a)(1) of the Act to remove the 12-month limit on Medicare agreements with SNFs. The law was changed because program experience had indicated that TLAs were not necessary to ensure compliance, and an annual survey of all long term care facilities was not necessary. However, the regulations were not amended. Thus, they continue to require 12 month provider agreements for long term care facilities.

The TLA requirement also provides that the agreement with a SNF or ICF that is participating with deficiencies is cancelled automatically no later than 60 days after the last day specified in the plan of correction, unless the facility has corrected, or made substantial progress toward correcting, the deficiencies. Although the cancellation provision was established to ensure the timely correction of deficiencies, our experience has been that it is not effective. Since TLAs would be eliminated by this proposal, and because of strengthened termination procedures and the application of intermediate sanctions (see 42 CFR 442.118 and 489.60; 50 FR 24484, July 3, 1986), we no longer consider this automatic cancellation sanction necessary. Further, TLAs and automatic cancellations created a significant amount of paperwork and recordkeeping burden for both the State agency and HCFA.

The automatic cancellation provision, in particular, is overly mechanical in application, and extremely burdensome to both HCFA and the survey agencies. Because the automatic cancellation clause is applicable even when the deficiencies do not threaten the facility's approval or certification, a substantial percentage of nursing homes are subject to automatic cancellation at any given time. Most facilities, however, can show progress toward correcting the deficiencies within the required time frames. This means that HCFA or the Medicaid agency has to rescind the cancellation clause in virtually all of the cases. Rescission requires an onsite visit by the survey agency, documentation, and preparation of new certification forms to continue participation. Eliminating the requirement would permit survey agencies to tailor their monitoring efforts to the most serious

deficiencies requiring correction. For these reasons, we propose to eliminate both TLAs and the automatic cancellation provision.

*D. Subpart C—Special Rules: Providers and Suppliers With Deficiencies*

In §§ 488.75–488.90, we would relocate provisions currently in §§ 405.1905(b), 405.1907, 442.105, 442.110 and 442.111. Unless otherwise indicated in this preamble, no change in policy is intended in relocated material. We will consider comments only on substantive changes we may have made inadvertently.

Staffing of Surveys

The IoM recommended that HCFA should have the authority to specify the minimum composition of State survey teams. Since data indicate that nurses are full participants in almost all surveys, we have asked for new legislative authority to deal with this issue only when there is evidence that a problem exists in a particular State. Since change in this area requires legislation, these regulations cannot address this issue further.

Guidelines for the Post-Survey Process

The IoM recommended that we revise the guidelines for the post-survey process to include specifying how to evaluate plans of correction and what constitutes an acceptable plan of correction.

We concur with this recommendation but caution that while procedures could and should be more specific, some judgmental latitude will always be required, i.e., every possible situation or circumstance cannot be anticipated in the text of the regulations. Nevertheless, we agree that survey agencies need greater direction and consistency regarding the actual content of the plan of correction such as, what constitutes an acceptable plan; how correction actions should be measured; and specific timeframes to ensure effective correction of deficiencies. We are proposing revisions to clarify the existing policy on plans of correction. We also plan to issue further clarification in revised guidelines after these regulations are published in final, continue to improve surveyor training, and refine further the survey process to enhance the States performance relative to plans of correction. In these regulations, we propose to require that:

1. For Medicare, the plan of correction must be acceptable to the survey agency and HCFA. For Medicaid-only facilities, the plan must be acceptable to the survey agency (unless HCFA has cause to question the adequacy of such approval and elects to review the determination in accordance with sections 1902(a)(33)(B) or 1910(c) of the Act); and

2. The time limit for correcting deficiencies will depend on the nature of the deficiencies. While a provider will ordinarily be expected to achieve compliance within 60 days, additional or less time may be determined appropriate by HCFA or the survey agency in individual situations, but in no case can the plan of correction extend beyond 12 months of the date of approval of the plan. These revisions are located in proposed § 488.75.

In order to implement the flexible survey cycle, we would delete the automatic cancellation clause provisions currently found at §§ 405.1908(a)(2) and 442.111 (b) and (c).

Sanctions of Chronic or Repeat Violators of the Conditions of Participation

The IoM recommended that the Medicaid statute should be amended to provide authority to sanction chronic or repeat violators of the conditions of participation. They recommended that HCFA develop detailed procedures to be followed by the States to deal with such facilities. They recommend that procedures include, but not be limited to:

- The authority to impose more severe sanctions;
- The requirement to consider a provider's previous record before approving continued participation or renewing a provider agreement; and
- The responsibility to obtain satisfactory assurances prior to readmission that the deficiencies which led to a termination will not recur.

We agree with this recommendation. We believe that Congress intended that participation in the Medicare and Medicaid programs should be based on a provider's ongoing compliance with program requirements. Because conditions of participation or coverage are essential Medicare and Medicaid program requirements, the failure to meet them has always been a basis for termination. However, current termination procedures do not allow us to address the problem provider who is found out of compliance with one or more conditions at the time of the annual certification survey, but repeatedly manages to correct the deficiencies just before the effective date of termination. Our regional offices have often expressed concerns about facilities on such compliance roller-coasters. Program experience confirms that these providers usually have a history of noncompliance which extends back more than 3 years.

Moreover, because we consider that repeat offenders constitute a special and serious problem, we believe it should be made more difficult for these providers to gain readmission to the programs. Section 1866(c) of the Act requires, as a condition for readmission for all Medicare providers, that there be "reasonable assurance that the cause for termination has been eliminated and is not likely to recur." However, application of this requirement has not been consistent or effective. We believe that minimal waiting periods should be established and the duration of those periods should be tied to the reason for termination.

In other words, providers that, over an extended period, have shown inability or unwillingness to maintain compliance should be required to wait longer for readmission than providers that, suddenly and perhaps for reasons beyond their control, find themselves out of compliance. We also believe that providers whose deficiencies jeopardize the health or safety of patients should have to wait longer for readmission.

The current reasonable assurance provision in section 1866(c)(1) of the Act applies only to providers participating in Medicare. Thus, while it applies to Medicare SNFs, and Medicare and Medicaid SNFs that are terminated as a result of HCFA action, it does not presently apply to ICFs. We believe that it would be proper and efficient for ICFs to be subject to a waiting period requirement that is applicable to Medicaid SNFs, especially in view of the proposed consolidation of participation requirements for these facilities. Therefore, consistent with our authority in section 1902(a)(4)(A) to require proper and efficient methods of Medicaid administration in § 488.90, as well as our authority in section 1905(c) of the Act to prescribe standards appropriate for the proper provision of ICF care, we are adopting a reasonable assurance requirement for ICFs that is modeled on section 1866(c) of the Act.

Current regulations at §§ 405.1908 (b) and (e) and 442.105 (c) and (d) also include repeat deficiency provisions that should be revised to make them a more effective deterrent, since they do not allow us to renew a provider agreement if there is a repeat deficiency of one or more standards within a condition. However, no such provision exists for repeated failure to comply with a Medicare condition. We, like the IoM, are concerned over repeat deficiencies at all levels. Termination of a provider agreement is warranted when the

facility has clearly demonstrated, over a period of time, the inability or unwillingness to comply with major program requirements or any requirement which, if not met, has a potentially adverse effect (as opposed to immediate jeopardy) on patient health and safety.

In proposed § 488.80, we would retain, as a cause for termination, the repeated failure of a SNF, ICF or ICF/MR to meet a standard at the next survey. However, we would terminate a facility only when the deficiency has an adverse effect on patient health or safety, or was not corrected at any time since the last survey. However, we would also provide for the situation in which a provider repeatedly corrects deficiencies before the effective date of termination of its provider agreement. We would provide for termination of the provider agreement when, at the time of the survey, the provider is determined to be not in compliance with (1) the condition(s) of participation in two consecutive surveys, or (2) any condition of participation in three consecutive surveys, even if the facility corrected the deficiency before the effective date of termination of the provider agreement. Termination would remain in effect and the facility would be subject to the waiting period provisions discussed below. (This provision does not alter the provisions of the alternative sanction regulations at §§ 489.60 and 442.118, should HCFA or the Medicaid agency choose to apply intermediate sanctions in lieu of termination.)

We also propose to revise the reasonable assurance rules to establish reasonable assurance waiting periods as follows:

1. If termination was based on a deficiency that was not an immediate and serious threat to residents' health or safety—3 months.

2. If termination was based on a deficiency that was an immediate and serious threat to residents' health or safety—6 months.

3. If termination was based on repeated deficiencies—at least 1 year.

Exceptions to the minimal waiting periods could be made under the following circumstances:

1. The deficiencies are of the type—such as physical plant deficiencies—that once corrected, are not likely to recur. For example, if a facility is terminated for not having an alarm system, it could be reinstated when that deficiency has been corrected.

2. The facility is under a Federal or State Court appointed receivership.

3. There is change in ownership. (In this case the waiting period would depend on the new owners' compliance history.)

*E. Subpart D—Miscellaneous Provisions*

In §§ 488.95–488.115, we would relocate provisions currently in §§ 405.1909, 405.1910, 405.1911, 405.1912 and 405.1913. With the exception of § 488.110, no change in policy is intended in relocated material. In § 488.110, we are adding a waiver of the ICF medical director requirement, described below, which conforms to the addition of the medical director requirement for ICFs in a related proposed rule published in the **Federal Register** on October 16, 1987 at 52 FR 38582. We will consider comments only on substantive changes we may have made inadvertently.

We will be making one change in these sections; however, the nature of that change will depend upon which of the alternative proposals for nurse staffing are adopted in proposed 42 CFR 483.30 (see 52 FR 38599–38600). In that section, we would require one of three staffing configurations for intermediate care facilities—

- 24 hour licensed nurse staffing as is required for SNFs,
- 24 hour staffing by licensed nurses and other nursing personnel (as is currently required for ICFs), or
- 24 hour licensed nurse staffing as is required for SNFs but with a provision under which the requirement can be waived if failure to meet the requirement does not adversely affect the quality of care in the intermediate care facility.

If we adopt the 24 hour licensed nurse staffing requirements currently applicable to SNFs for ICFs, as well, the waiver of the 7 day a week nurse staffing requirement currently available to SNFs and now reflected in proposed § 488.110(a) would also be applicable to ICFs. If we retain the current ICF staffing requirements, no waivers will be permitted. If we adopt the third alternative, we will permit 6 month waivers of the staffing requirement. The waiver provisions we will adopt if this alternative is chosen are proposed at § 488.112. We particularly invite comment concerning the feasibility of implementing this proposed waiver requirement.

## IV. Revisions to the Regulations

We propose to make the following revisions to the regulations in title 42:

1. In Part 405, Subpart S, Certification Procedure for Providers and Suppliers of Services, would be removed and reserved. The content of Subpart S would be revised and redesignated as a new Part 488.

2. In Part 442, Subpart C, Certification of SNFs and ICFs, would be removed and reserved. The content of Subpart C would be revised and redesignated as a new Part 488.

3. In Subchapter E, a new Part 488 would be added to describe the survey and certification procedures for all facilities participating in Medicare and Medicaid.

4. In Part 489 Subpart A, we would remove and reserve §§ 489.15 and 489.16.

## V. Regulatory Impact Statement

*A. Introduction*

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for regulations that meet the criteria of a "major rule". A major rule is a regulation that would be likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

In addition, we prepare and publish an initial regulatory flexibility analysis, consistent with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 through 612), for regulations unless the Secretary certifies that their implementation would not have a significant economic impact on a substantial number of small entities.

There is not enough information to predict whether this rule, by itself, would or would not be a major rule. Nonetheless, it clearly would have a significant economic impact on a substantial number of small entities. Therefore, we have prepared the following analysis, which serves as an analysis consistent with the RFA and a voluntary economic analysis under E.O. 12291.

*B. Impact on Facilities*

There are currently about 9,500 skilled nursing and 5,600 intermediate care facilities, that are approved for participation in either Medicare, Medicaid or both. The majority of these facilities are proprietary (77%), followed by non-profit (21%), and government operated (2%).

The major raw indicator that we have available as a measure of facility

compliance problems is termination. This includes both voluntary and involuntary terminations, since voluntary terminations are often precipitated by adverse survey findings (though some change of ownership actions also are reported as voluntary terminations). The number of voluntary terminations of SNFs for calendar years 1983–1985 was 112, 100 and 100, respectively. Involuntary terminations for the same period were 10, 27 and 24, respectively. ICFs that voluntarily terminated for the same period were 126, 132 and 105, respectively. Involuntary terminations of ICFs for the same period were 16, 16 and 21, respectively. Current data show that there were 52 still active and 46 recently terminated SNFs with repeat (2 surveys) noncompliance for the same conditions of participation as of November 1986. Twenty nine active and 49 recently terminated SNFs showed noncompliance with any condition for 3 consecutive surveys.

There are approximately 3,000 intermediate care facilities for the mentally retarded (ICFs/MR) that are currently Medicaid certified. Voluntary terminations for ICFs/MR for fiscal years 1983–1985 were 51, 21, and 26, respectively. Involuntary terminations for the same period were 0, 3, and 11, respectively. In fiscal year (FY) 1986, there were 53 voluntary terminations. This reflects a 50 percent increase over the preceding year. Conversely, involuntary terminations for the same period increased more than 100 percent from the previous year (11 to 25).

The current facilities that are not in compliance with the standards show anywhere from 5 to 200 deficiencies per facility. We assume that facilities with fewer standards out of compliance will have a less difficult time to achieve compliance than facilities with large numbers of conditions out of compliance subsequent to the implementation of the proposed regulation.

We expect that the implementation of this rule will significantly influence those facilities that have been noncompliant in the past to come into fuller compliance with the conditions rather than risk the loss of Federal funds. On the other hand, there will be a small percentage of facilities that may be unable to comply with the conditions because either they are poorly managed or have a poor financial structure. Facilities in this situation are probably among those facilities that provide minimum quality of care. Some of these facilities, as well as some facilities unwilling to bear the costs of improving their compliance, may choose to forego program participation.

We expect the proposed provisions on repeat offenders and reasonable assurances will increase the incentives for marginal facilities to maintain full ongoing compliance with health and safety standards. The use of irregularly timed unannounced surveys should also serve to intensify those incentives. For the most part, terminations are avoidable by facilities that are willing and able to allocate their resources effectively to ensure compliance. Thus, these changes may not actually result in a higher rate of terminations. To the extent that those marginal facilities that are most at risk from these provisions are able to come into full compliance, there may even be a reduction in the frequency of adverse actions. Of course, facilities would ordinarily incur some costs associated with compliance efforts. Those costs could be particularly substantial if they were necessitated by significant staffing increases or by alterations to a physical plant. Each facility would need to weigh the costs of compliance with increased revenues resulting from program participation.

*C. Impact on State Survey Agencies*

Generally, the impact that this proposed rule would have on State survey agencies must be viewed in the context of other ongoing activities related to survey and certification.

On October 1, 1986, HCFA implemented its new long-term care survey process (formerly called the Patient Care and Services (PaCS) Survey Process). The new approach continues to emphasize review of the provision of resident care and services through an integrated system of resident observation, interviews and record reviews. This new system ordinarily reduces the review burden from over 500 items to 357 items. However, it is expected that the amount of time to conduct a survey will remain the same due to the addition of resident reviews and resident participation in the new process.

HCFA pays the survey agencies directly for their costs in surveying Medicare providers. HCFA matches 75 percent of State costs for surveying Medicaid providers. Currently HCFA employs a Medicare unit cost budget methodology that has established a 60 hour onsite survey time for SNFs. A total time of 148 hours for an average facility (100 beds) has been recommended based on several past studies conducted by central and regional office personnel. The supplemental hours include preparation, travel time, post visit documentation, supervisory review, and clerical support.

Future survey or training courses proposed for FY 1987 will be designed to provide the new State agency surveyor with the skills of observation as they relate to health facility surveys; and with the knowledge to apply Federal survey requirements in an accurate, consistent, and time efficient manner.

We expect that these changes would not necessitate greater expenditures on the part of State survey agencies. However, they probably would result in a reallocation of resources, particularly geared to more intensive monitoring of marginal facilities. Further, these changes in the regulations would contribute to a shift toward more enforcement oriented roles for State survey agencies and surveyors.

*D. Impact on Residents*

The immediate benefits of compliance with this proposed regulation would be the increase in overall quality of health care provided in SNFs and ICFs. As a result of the new long-term care survey process, residents are also more enthusiastic in light of their new participating role in the survey process. This is already resulting in better mental as well as physical condition. Potential termination of provider agreements of SNFs and ICFs could have a significant impact on beneficiaries, especially those living in rural areas, by requiring residents to be moved to another SNF or ICF.

*E. Conclusion*

We fully expect that the great majority of SNFs and ICFs that are found routinely out of compliance with one or more standards will exert efforts to comply with the new proposed rules. However, we expect that some facilities will have repeated deficiencies which they are unable to correct, whether for financial or other reasons, and those providers are more likely to be terminated under these proposals than under existing regulations. However, we estimate that this is a small contingent, and we believe their termination would reduce the problem of less-than-standard care. We believe the benefits of this proposed rule outweigh the problems that may be created for some borderline SNFs and ICFs.

*F. Paperwork Burden*

Sections 488.30, 488.35, 488.50 (b) and (c), 488.55, 488.70(e)(2), 488.95(b), 488.105(c) of the proposed rule contain information collection requirements. As required by the Paperwork Reduction Act of 1980, we have submitted a copy

of the proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: Desk Officer for HCFA.

## VI. Response to Comments

Because of the many letters of comment we receive in response to proposed rules, we cannot respond to them individually. However, we will consider all timely comments (or those requirements for which comments are requested) and discuss them in the preamble to the final rule.

| Old section | New section |
|---|---|
| Redesignation Table for 42 CFR Part 405, Subpart S: | |
| 405.1901(a) | 488.5 |
| 405.1901(b) | 488.15 |
| 405.1901(c) | 488.20 |
| 405.1901(d) | 488.20 |
| 405.1901(e) | 488.70 |
| 405.1901(g) | Removed; duplicates 45 CFR Parts 80 and 85. |
| 405.1902(a) | 488.1(a) |
| 405.1902(b) | 488.40 |
| 405.1902(c) | 488.40 |
| 405.1903 | 488.50 |
| 405.1904(a) | 488.60 |
| 405.1904(b) | 488.40 |
| 405.1904(c) | Removed as unnecessary. |
| 405.1905(a) | 488.45(d) |
| 405.1905(b) | 488.85 |
| 405.1906 | 488.45(a) |
| 405.1907 | 488.75 |
| 405.1908 | Removed as inconsistent with proposed new policy. |
| 405.1909 | 488.95 |
| 405.1910 | 488.100 |
| 405.1911 | 488.110 |
| 405.1912 | 488.105 |
| 405.1913 | 488.115 |
| Redesignation Table for 42 CFR Part 442, Subpart C: | |
| 442.100 | 488.10 |
| 442.101 | 488.30 |
| 442.105 | 488.75 |
| 442.111 | 488.75 |
| 442.112 | Removed as inconsistent with proposed new policy. |
| 442.113 | Retained in Part 442 |
| 442.115 | Until this final rule is published. |

### List of Subjects

*42 CFR Part 405*

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

*42 CFR Part 442*

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

*42 CFR Part 488*

Medicare, Medicaid, Survey and certification.

*42 CFR Part 489*

Health facilities, Medicare.

42 CFR Chapter IV would be amended as set forth below:

**§§ 405.1901—405.1913 [Removed and Reserved]**

A. In Part 405, Subpart S, §§ 405.1901 through 405.1913, is removed and reserved.

## PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

B. 1. The authority citation for Part 442 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

**§§ 442.100—442.112 [Removed and Reserved]**

2. In Part 442, Subpart C, §§ 442.100 through 442.112 are removed and reserved.

C. A new Part 488 is added to Subchapter E to read as follows:

## PART 488—SURVEY AND CERTIFICATION PROCEDURES: MEDICARE AND MEDICAID

### Subpart A—General Provisions

Sec.



### Subpart B—Role and Responsibilities of the Survey Agency



### Subpart C—Special Rules: Providers and Suppliers With Deficiencies



### Subpart D—Miscellaneous Provisions



**Authority:** Secs. 1102, 1864, 1865, 1866, 1871, 1902(a)(28), 1902(a)(33)(B), and 1910(c) of the Social Security Act (42 U.S.C. 1302, 1395aa, 1395bb, 1395cc, 1395h, 1396a(a)(28), 1396(a)(33)(B), 1396i(10)(C), and 1395hh).

### Subpart A—General Provisions

**§ 488.1 Basis and scope.**

(a) *Statutory basis.* (1) Section 1864(a) of the Act requires the Secretary to enter into an agreement with any State that is able and willing to do so, under which appropriate State or local survey agencies will ascertain whether:

(i) Providers or prospective providers meet the Medicare conditions of participation;

(ii) Suppliers meet the conditions for coverage; and

(iii) Rural health clinics meet the conditions of certification.

(2) Section 1865(a) of the Act provides as follows:

(i) An institution accredited as a hospital by the Joint Commission on Accreditation of Hospitals (JCAH) is deemed to meet the conditions of participation, except those pertaining to utilization review plans and any standard promulgated by the Secretary that is higher than JCAH requirements.

(ii) If a hospital approved on the basis of JCAH accreditation is included in a validation survey it must, in order to retain its deemed status, authorize the JCAH to release to the Secretary, upon request and on a confidential basis, a copy of its current JCAH accreditation survey.

(iii) A hospital accredited by the American Osteopathic Association (AOA) or any other national accrediting body may be deemed to meet the conditions of participation if the Secretary finds that accreditation gives reasonable assurance of compliance. The Secretary has found that the accreditation of hospitals by the AOA provides that reasonable assurance, and has extended the same procedures applicable to JCAH accredited hospitals to AOA accredited hospitals.

(3) Section 1864(c) of the Act authorizes the Secretary to enter into agreements with State survey agencies to conduct validation surveys in hospitals accredited by the JCAH. Section 1865(b) provides that an accredited hospital which is found after a validation survey to have significant deficiencies will no longer be deemed to meet the conditions of participation.

(4) Under section 1863 of the Act, if a State or political subdivision imposes higher requirements for purchase of Medicaid services, like requirements must be imposed for payment for Medicare services in that area. This section also authorizes a State to request the imposition of higher requirements in the State.

(5) Section 1902(a)(33)(B) of the Act provides that the survey agency will perform the function of determining whether a provider meets the requirements for participation in Medicaid. Exception: If HCFA has cause to question such determinations, it may validate such determinations, and, on that basis, make independent and binding determinations concerning whether the requirements are met.

(6) Section 1910(a) provides that skilled nursing facility approved for participation in Medicare is deemed to meet the requirements for participation in Medicaid.

(7) Section 1910(c) provides that HCFA may cancel approval of any SNF or ICF for participation in Medicaid at any time if HCFA finds—

(i) On the basis of a determination made by HCFA under section 1902(a)(33)(B), that the facility has failed to meet the requirements for participation in Medicaid applicable to SNFs or ICFs;

(ii) Grounds for terminating the Medicare provider agreement for failure to meet applicable participation requirements; or

(iii) Other reasons specified in section 1866(b) of the Act.

(b) *Scope.* This part sets forth the requirements and procedures for surveying providers, suppliers, and certain practitioners that participate or seek to participate in Medicare or Medicaid, or both, and for certifying whether they meet the conditions of participation or the conditions for coverage of their services. It also describes the impact that the certifications have on participation in either or both programs.

**§ 488.5 Definitions.**

As used in this part, unless the context indicates otherwise—

*"Accredited hospital"* means a hospital accredited by the Joint Commission on Accreditation of Hospitals (JCAH), or the American Osteopathic Association (AOA).

*"Full review"* means a survey of a hospital to determine compliance with all of the applicable conditions of participation for hospitals.

*"Practitioner"* means a chiropractor or physical or physical therapist in independent practice.

*"Substantial allegation"* means a complaint that pertains to the health and safety of patients and raises doubts as to whether a hospital is in compliance with the conditions of participation.

*"Survey agency"* means the State health agency or other appropriate State or local agency used by HCFA to perform survey and review functions for Medicare and used by the Medicaid State agency to perform survey and review functions for Medicaid. It may also mean HCFA or its contractors when HCFA performs the surveys on which approval or disapproval for participation is based, or on which Medicaid "look behind" determinations are made by HCFA under sections 1902(a)(33)(B) and 1910(c) of the Act.

**§ 488.10 State plan requirements.**

A State plan must provide that the requirements of this part are met, to the extent that requirements apply to the Medicaid program.

**§ 488.15 Eligibility for participation in Medicare or Medicaid.**

(a) *Basic requirements.* In order to be approved for initial or continued participation in Medicare or Medicaid, a provider, supplier, or practitioner must meet all applicable conditions of participation or coverage set forth elsewhere in this chapter.

(b) *Requirements imposed by States or at State request.* (1) If a State or any of its political subdivisions imposes higher requirements as a condition for the purchase of Medicaid services under a plan approved under title XIX of the Act, HCFA will impose similar requirements as a condition for Medicare payment in that State or political subdivision.

(2) At a State's request, HCFA may approve additional requirements for providers and suppliers in that State that are higher than those applied elsewhere for Medicare.

**§ 488.20 Effect of accreditation by the Joint Commission on Accreditation of Hospitals (JCAH) or the American Osteopathic Association (AOA).**

Hospitals accredited by the JCAH or AOA are deemed to meet all of the Medicare conditions of participation for hospitals, except the following requirements that are set forth elsewhere in this chapter:

(a) The requirement for utilization review (42 CFR 482.30).

(b) The additional special staffing and medical records requirements for the provision of active treatment in psychiatric hospitals (42 CFR 482.60–482.62).

(c) Any requirement that HCFA issues as a condition of participation that is higher or more precise than the requirements for accreditation.

**§ 488.25 Responsibility to provide necessary information.**

To be approved for participation or continued participation in the Medicare or Medicaid program, providers, suppliers and practitioners must grant access to—

(a) All parts of a facility at any time; and

(b) Records determined necessary by the surveyors to assess compliance with Federal requirements.

**§ 488.30 Certification as prerequisite for Medicaid provider agreement.**

(a) A Medicaid agency must obtain notice of certification of a facility from the survey agency before executing a provider agreement, under § 442.12.

(b) The Medicaid agency must obtain notice of certification from HCFA for—

(1) A facility located on an Indian reservation; and

(2) A SNF that has been approved for participation in Medicare.

(c) The Medicaid agency must obtain notice of certification from the survey agency for all other facilities.

**§ 488.35 Content of notice of Medicaid certification.**

A notice of Medicaid certification must state that the facility—

(a) Meets the applicable conditions of participation or coverage, except for waivers or variations granted by HCFA or the survey agency, as authorized by regulations; or

(b) Has been certified contingent upon correcting deficiencies in meeting those conditions, under the provisions of this part.

## Subpart B—Role and Responsibilities of the Survey Agency

**§ 488.40 Survey agency: Responsibilities and actions.**

(a) *General.* (1) Under both Medicare and Medicaid, the primary responsibility of the survey agency is to conduct onsite surveys, to apply applicable conditions of participation or coverage, and to document the extent to which the provider, supplier or practitioner meets or fails to meet those conditions.

(2) Under Medicare, the survey agency findings are transmitted to HCFA in the form of a recommendation as to compliance or non-compliance with the conditions of participation or coverage. HCFA accepts or rejects the survey agency's recommendation, and HCFA's determination results in a binding decision. The State survey agency findings and recommendations are subject to review by HCFA.

(3) Under Medicaid, the survey agency findings are certified to the Medicaid agency and constitute a binding decision as to compliance or non-compliance with the conditions of participation or coverage.

(i) The Medicaid agency may not issue a provider agreement to an entity that is not certified as meeting the applicable conditions of participation or coverage.

(ii) The Medicaid agency is not obligated to enter into a provider agreement with every entity certified by the survey agency as meeting the conditions of participation or coverage.

(iii) A Medicaid certification by the survey agency is subject to authority under sections 1902(a)(33)(B) and 1910(c) of the Act.

(4) The survey agency must use Federal standards and forms, methods, and procedures for determining whether or not providers and suppliers meet applicable conditions of participation or coverage.

(5) The survey agency is relieved of responsibility for performing utilization review in facilities that are under review by a Utilization and Quality Control Peer Review Organization, in accordance with sections 1158 and 1902(d) of the Act and Part 466 of this chapter.

(b) *Effect of determination of noncompliance.* If the survey agency determines that a facility is not in compliance with a condition of participation or coverage—

(1) HCFA terminates the Medicare provider agreement;

(2) The Medicaid agency must terminate the Medicaid provider agreement;

(3) In the case of a SNF participating in both programs, the Medicare and Medicaid agreements must be terminated effective on the same date; and

(4) In the case of a SNF participating in one or both programs, or in the case of an ICF, an alternative sanction may be available other than termination, as provided in §§ 442.118 and 489.60.

**§ 488.45 Determining compliance.**

(a) *Evaluation of requirements.* The decision as to whether a particular condition of participation or coverage is met depends on how and to what degree the provider or supplier satisfies the various standards within each condition. Evaluation against these requirements enables the survey agency to document the nature and extent of deficiencies, if any, with respect to a particular function, and to assess the need for improvement in relation to the prescribed conditions.

(b) *Finding of compliance.* The survey agency finds that a provider or supplier is "in compliance" if there are no deficiencies.

(c) *Finding of compliance with conditions despite deficiencies in standards.* The survey agency may find that a facility with deficiencies in one or more standards meets the requirements for participation if—

(1) The deficiencies, either individually or in combination, do not jeopardize the health or safety of individuals or substantially limit the facility's capacity to furnish required care and services; and

(2) There is a plan for correction of the deficiencies approved by HCFA (for Medicare) or the survey agency (for Medicaid), or a waiver under Subpart F of this part.

(d) *Finding of noncompliance.* The survey agency must find that a facility is not in compliance if—

(1) The facility does not meet one or more of the conditions of participation or coverage; or

(2) The deficiencies, either individually or in combination, jeopardize the health or safety of patients or substantially limit the facility's capacity to furnish required care and services.

**§ 488.50 Surveys: Documentation of findings.**

(a) *Basic rule.* The survey agency must document its findings of compliance or noncompliance with respect to each condition of participation or coverage.

(b) *Documentation of finding of compliance with deficiencies.* If the survey agency finds a provider or supplier to be in compliance with the conditions of participation or coverage despite deficiencies in one or more standards, the survey agency must incorporate into the survey record—

(1) A statement of the deficiencies that are found; and

(2) A time-phased plan of correction that is developed by the provider or supplier, concurred in by the survey agency and, if the facility participates in Medicare, subject to review by HCFA.

(c) *Documentation of a finding of noncompliance.* If the survey agency finds that a provider or supplier does not meet the conditions of participation or coverage, that agency must incorporate in the survey record a description of the specific deficiencies on which the noncompliance is based, and if appropriate, the agency's assessment of the prospects for improvements that would enable the provider, supplier, or practitioner to comply with the condition(s) within a reasonable period of time, as specified in § 488.75 of this part.

**§ 488.55 Notice of determination.**

(a) *Written notice.* (1) For Medicare, the survey agency must give written notice of its certification of compliance or non-compliance to HCFA, and HCFA gives written notice of its determination to the affected provider, supplier, or practitioner.

(2) For Medicaid, the survey agency must give written notice of its certification of compliance or non-compliance to the affected provider, supplier, or practitioner.

(b) *Notice of eligibility to participate with deficiencies or under waiver.* (1) If the survey agency finds that a facility with deficiences meets the requirements

for participation on the basis of an acceptable plan for correction of the deficiencies, the notice must include the information specified in § 488.50 of this part.

(2) If HCFA has granted a waiver of the 7-day registered nurse requirement under section 1861(j) of the Act, the notice must include the basis for granting the waiver.

(3) If HCFA has approved an ESRD facility, under § 488.105 of this part, as an exception to complying with the minimal utilization rates, the notice must include the information on which that approval was based.

Alternative I

**§ 488.60 Survey schedules.**

(a) *Long-term care facilities.* (1) Surveys of SNFs, ICFs, and ICFs/MR must be unannounced and staggered, within the following time frames, so that the facility cannot anticipate the exact date:

(i) At least every 15 months for a facility with a good compliance history; and

(ii) At least every 9 months for a facility with a marginal compliance history.

(2) The Statewide average length of time between surveys of all SNFs, ICFs, and ICFs/MR must not exceed 12 months.

(b) *All other providers and suppliers.* All other providers and suppliers must be surveyed at least annually.

Alternative II

**§ 488.60 Survey schedules.**

(a) *Long-term care facilities.* Surveys of SNFs, ICFs, and ICFs/MR must be unannounced and staggered, within the following time frames, so that the facility cannot anticipate the exact date. For facilities—

(1) With no deficiencies, not less frequently than every 24 months;

(2) With a deficiency in any standard other than those specified in paragraph (a)(4) of this section, not less frequently than every 18 months;

(3) That took corrective action so that termination was not necessary, not less frequently than every 9 months for a deficiency in a condition of participation other than quality of care; and

(4) That took corrective action so that termination was not necessary, not less frequently than every 6 months for one or more deficiencies in—

(i) Standards under the quality of care condition, § 483.25 of this subchapter; or

(ii) Active treatment requirements under Part 442 Subpart G of this chapter.

(b) *All other providers and suppliers.* All other providers and suppliers must be surveyed at least annually.

**§ 488.70 Validation surveys of accredited hospitals.**

(a) *Basis for survey.* HCFA may require a survey agency to survey an accredited hospital to validate the JCAH or AOA accreditation process. These surveys are conducted on a selective-sample basis, or in response to substantial allegations of significant deficiencies.

(b) *Provider cooperation.* (1) A survey agency must request a hospital selected for a validation survey to:

(i) Authorize its accrediting organization to release to HCFA or the survery agency, on a confidential basis, a copy of the hospital's current accrediation survey. (For the rules on confidentiality, see § 401.126 of this chapter);

(ii) Authorize carrying out the validation survey; and

(iii) Authorize its accrediting organization to release periodic status reports to HCFA on correction of deficiencies when HCFA and the accrediting body agree that the latter will monitor the correction of deficiencies.

(2) If a hospital selected for a validation survey refuses to comply with the authorization requirements specified in section 1865(a) of the Act and paragraph (b)(1) of this section, it will no longer be deemed to meet the Medicare conditions of participation but will be subject to full review by the survey agency, and may be subject to termination of its provider agreement under § 489.53 of this subchapter.

(c) *Consequences of finding of noncompliance.* (1) If a validation survey results in a finding that the accredited hospital is out of compliance with one or more conditions of participation and at significant deficiency is determined to exist, the hospital is no longer deemed to meet the conditions of participation. The hospital is subject to the survey procedures applied to unaccredited hospitals that are found out of compliance following a survey by the survey agency (see § 488.75), and to full review by a survey agency (§ 488.1(a)).

(2) The survey agency determines that a significant deficiency does not exist if:

(i) The accrediting body accepts the survey agency finding of deficiencies and agrees to monitor the correction of the deficiencies in accordance with specified time frames specified by HCFA;

(ii) The survey agency is unable to justify to HCFA the need for continued full review to assure correction of deficiencies; and

(iii) The accrediting body provides HCFA with periodic reports of progress toward corrections.

(d) *Reinstatement of effect of accreditation.* An accredited hospital that has lost deemed status will be once again deemed to meet the Medicare conditions of participation, prospectively, in accordance with § 488.15 under the following circumstances:

(1) The hospital withdraws—

(i) Any prior refusal to authorize its accrediting body to release a copy of the hospital's current accrediation survey;

(ii) Any prior refusal to allow a validation survey;

(iii) Any prior refusal to authorize its accrediting body to release periodic status reports on correction progress; and

(2) The survey agency of HCFA (as appropriate) finds that the hospital meets all the conditions of participation.

(3) *Informal administrative review.* (1) An accredited hospital participating in the Medicare program that is dissatisfied with a finding that it is not in compliance with a condition of participation, or a finding that it is no longer deemed to meet the conditions of participation, is entitled to an informal adminstrative review.

(2) The hospital must request informal review by HCFA in writing within 15 days of the date it received HCFA's notice of findings.

(3) The request must state why the findings is considered incorrect and must be accompanied by any supporting evidence and arguments.

## Subpart C—Special Rules: Providers and Suppliers With Deficiencies

**§ 488.75 Plan of correction.**

Time allowed for correction of deficiencies by providers and suppliers:

(a) Except as indicated in paragraph (a)(2) of this section, a provider or supplier that is eligible to participate and meets the requirements in § 488.45(c), must achieve compliance within 60 days of being notified of the deficiencies, as provided in § 488.55.

(b) If a survey agency finds, during an onsite survey, that a provider or supplier is not in compliance with one or more of the standards, the survey agency may allow an extended period which it deems reasonable for the provider or supplier to achieve compliance.

(c) The amount of time depends upon the nature of the deficiency and the survey agency's assessment as to the demonstrated ability of the provider or

supplier to provide adequate and safe care in the interim, and the effect that the deficiencies have on patient health or safety. The extended period, however, may not exceed 12 months from the date on which the first plan was initially approved.

**§ 488.77 Verification of continued eligibility for participation with deficiencies or under waiver.**

(a) The survey agency must perform follow-up surveys within the following timeframes:

(1) No later than 180 days after completion of the initial survey for a facility participating under an approved plan for correction of deficiencies;

(2) Whenever HCFA or the survey agency considers it necessary to reexamine a facility's eligibility for waiver, or for an exception to meeting the ESRD utilization rates.

(b) Method of verification.

(1) *Basic rule.* Except as provided in paragraph (b)(2) of this section, verification is by onsite survey.

(2) *Exception.* The survey agency may verify compliance with a plan of correction by phone or mail when the information to be verified pertains to one of the following:

(i) Status reports on the facility's efforts to hire staff;

(ii) Status reports on capital improvements, or copies of contracts or repair orders negotiated by the facility; or

(iii) Other written documentation that was incorrect or unavailable during the onsite survey.

**§ 488.80 Termination of surveyed providers for repeated deficiencies.**

(a) *Deficiencies in conditions.* HCFA or the Medicaid agency terminates a provider agreement if the provider or supplier is out of compliance with—

(1) The same condition (or conditions) of participation in 2 consecutive certification surveys; or

(2) Any condition (or conditions) of participation in 3 consecutive certification surveys.

(b) *Deficiencies in standards.* HCFA or the State Medicaid agency (as appropriate) terminates a provider agreement if a standard-level deficiency was cited in two consecutive surveys (irrespective of possible interim corrective action) and HCFA or the survey agency finds that the deficiency jeopardizes patient health or safety, or substantially limits the capacity of the provider or supplier to furnish required care and services.

**§ 488.85 Appeals.**

Appeals procedures applicable to this part, including identification of those determinations for which review may be sought, are set forth in Subpart O of Part 405 of this chapter for Medicare, and in Subpart D of Part 431 of this chapter for Medicaid.

**§ 488.90 Reasonable assurance for reinstatement after termination for deficiencies.**

(a) *Basic rule.* A facility that has been terminated from either Medicare or Medicaid, or both, will not be reinstated until the following requirements are met:

(1) A period of compliance has been documented.

(2) HCFA or the Medicaid agency (as appropriate) has concluded that the reason for termination is not likely to recur.

(3) An appropriate "reasonable assurance" waiting period has elapsed.

(b) *Duration of reasonable assurance waiting period.* The length of the reasonable assurance waiting period varies depending on the nature of the deficiency that led to termination, and extends from the effective date of termination, as follows:

(1) Three months, if the cause for termination is failure to meet applicable conditions of participation or coverage, and there was not an immediate and serious threat to patient health and safety;

(2) Six months, if the cause for termination is the failure to meet applicable conditions of participation or coverage, and the deficiencies constituted an immediate and serious threat to patient health and safety; and

(3) One year, if the cause for termination is repeated deficiencies, as specified in § 488.80 of this part.

(c) *Exceptions to duration of waiting period*—(1) *Deficiencies not likely to recur.* The waiting periods specified in paragraph (b) of this section may be shortened by HCFA or the Medicaid agency (as appropriate) if the deficiency that caused termination is one, (such as a physical plant deficiency) that once corrected is unlikely to recur. For example, a facility terminated for not having an alarm system, may be reinstated as soon as it installs an alarm system.

(2) *Receivership.* A facility that is being operated under a Federal or State Court receivership may be reinstated as soon as compliance is achieved and documentation received acceptable to HCFA, for Medicare, or the survey agency, for Medicaid.

(3) *Change of ownership.* For a facility that changes ownership, the following rules apply:

(i) If the new owners had no previous terminations in the last year of any facility they own or previously owned, that warranted a reinstatement waiting period exceeding 3 months, under paragraph (b) of this section, the facility may be reinstated when compliance is achieved and HCFA, for Medicare, or the survey agency, for Medicaid, receives acceptable documentation.

(ii) If the new owners had previous terminations in the last year of one or more of their facilities that warranted a reinstatement waiting period exceeding 3 months, under paragraph (b) of this section, the waiting period appropriate for the most recent termination applies.

(d) *Findings not subject to appeal.* A finding that a provider or supplier does not meet the requirements for reinstatement specified in this section is not a determination that is subject to the appeals procedures set forth in Subpart O of 42 CFR Part 405 (see § 405.1505(f)).

## Subpart D—Miscellaneous Provisions

**§ 488.95 Special requirements for independent laboratories.**

(a) An independent laboratory that has had its previous approval revoked, totally or for a specialty or subspecialty, because of unsatisfactory performance in proficiency testing, may subsequently be certified by the survey agency and determined by HCFA to be in compliance with the conditions for coverage if—

(1) After a 6-month period, an appraisal of the laboratory's performance in a proficiency testing program as defined in § 405.1311(c) of this chapter reflects satisfactory test results on at least two sets of specimens, or

(2) After a 3-month period, the agency's assessment of the laboratory's performance in examining proficiency test samples, analyzed during at least two survey agency onsite visits, establishes the laboratory's competency

(b) A laboratory that meets the requirements of § 488.75(a) or paragraph (a) of this section may continue to be certified by the survey agency and determined by HCFA to be in compliance with these conditions if it—

(1) Reports promptly any change in ownership, locating, directors, or supervisors; and

(2) Permits a survey agency to conduct an onsite visit or survey at any time during the laboratory's regular hours of operation.

**§ 488.100 Temporary waivers for small rural hospitals.**

(a) *Applicability.* This section applies only to hospitals that—

(1) Are located in areas not classified as "urban" by the most recent national census; and

(2) Have 50 or fewer inpatient beds.

(b) *General requirements for waivers.* If a small rural hospital is found to be out of compliance with certain conditions of participation, HCFA may grant a temporary waiver if the following conditions are met:

(1) The nature of the deficiencies are such that they do not jeopardize or adversely affect the health or safety or patients.

(2) The hospital complies with all conditions contained in the statute and regulations, except those that are specifically waived (as authorized).

(3) The hospital has made and continues to make good faith efforts to comply with personnel requirements consistent with any waiver.

(c) *Duration of waivers.* HCFA issues a waiver for a period not in excess of one year, and may withdraw the waiver before the end of the specified term if that is necessary to protect the health or safety of patients.

(d) *Waiver of nursing service requirement.* HCFA may waive the requirement for 24-hour nursing services furnished or supervised by a registered nurse if the following conditions are met:

(1) The hospital's failure to comply fully with the 24-hour nursing requirement is attributable to a temporary shortage of qualified nursing personnel in the area in which the hospital is located.

(2) A registered nurse is present on the premises to furnish or supervise the nursing services during at least the daytime shift, 7 days a week.

(3) The hospital has in charge, on all tours of duty not covered by a registered nurse, a licensed practical (vocational) nurse.

(4) All requirements listed in paragraph (b) of this section are met.

(e) *Waiver of technical personnel requirements.* (1) HCFA may waive technical personnel requirements in the conditions of participation if the following conditions are met:

(i) The hospital's failure to comply with the requirements is attributable to limitations on the availability of technical personnel and educational opportunities for technical personnel in the area in which the hospital is located.

(ii) All the requirements of paragraph (b) of this section are met.

(2) In conjunction with the waiver, HCFA may also limit the scope of services the hospital may furnish, so as to protect the health and safety of patients.

**§ 488.105 Special procedures for approving end-stage renal disease (ESRD) facilities and the expansion of services in approved end-stage renal disease facilities.**

(a) *Considerations for approval.* The conditions for coverage of ESRD services are set forth in Part 405, Subpart U of this chapter. If an ESRD facility requests approval for coverage of its services or for expansion of renal dialysis services, the following are considered:

(1) The survey agency's certification;

(2) The service needs of the area; and

(3) The facility's utilization rates.

(b) *Determining compliance with minimal utilization rates: Time limitations*—(1) *Unconditional status.* A facility that meets minimal utilization requirements will be assigned this status as long as it continues to meet these requirements.

(2) *Conditional status.* A conditional status may be granted to a facility for not more than four consecutive calendar years and will not be renewable. Its status may be examined each calendar year to ascertain its compliance with Subpart U.

(3) *Exception status.* Under unusal circumstances as specified in § 405.2122(c) of this chapter, HCFA may grant a time-limited exception to a facility that is not in compliance with the minimal utilization rate(s) for either unconditional status or conditional status. This exception status may be granted, and may be renewed on an annual basis, if rigid application of minimal utilization rate requirements would adversely affect the achievement of ESRD program objectives.

(c) *New applicant.* A facility that has not previously participated in the ESRD program must submit a plan detailing how it expects to meet the conditional minimal utilization rate status by the end of the second calendar year of its operation under the program and meet the unconditional minimal utilization rate status by the end of the fourth calendar year of its operation under the program.

(d) *Notification.* HCFA notifies each facility and its network organization of its initial and its subsequent minimal utilization rate classification and of any failure to meet standards for unconditional status or conditional status, or if applicable, for exception status.

**§ 488.110 Temporary waivers for skilled nursing facilities.**

(a) *Waiver of 7-day registered nurse requirements.* A temporary waiver of the requirement that SNFs (and ICFs) have a registered nurse on duty at least during the day tour 7 days a week may be granted if the documented findings of the survey agency show that the facility—

(1) Is located in a rural area where the supply of facility services is not sufficient to meet the needs of the area's residents;

(2) Has at least one full-time registered nurse who is regularly on duty at the facility 40 hours a week;

(3) Either—

(i) Has only residents whose attending physicians have indicated (through physicians' orders or admission notes) that each such resident does not require the services of a registered nurse for a 48-hour period; or

(ii) Has made arrangements for a registered nurse or a physician to spend such time at the facility as is determined necessary by the resident's attending physician to provide necessary services on days when the regular full-time registered nurse is not on duty; and

(4) Has made and continues to make a good faith effort to comply with the more than 40-hour registered nurse requirement, but is unable to meet the requirement because of the unavailability of registered nurses in the area.

(b) *Waiver of SNF or ICF medical director requirement.* A temporary waiver of the requirement that a SNF or ICF have a medical director may be granted if the documented findings of the survey agency show that the facility—

(1) Is located in an area where the supply of health care professionals is not sufficient to permit compliance with this requirement without seriously reducing the availability of health services within the area; and

(2) Has made and continues to make a good faith effort to comply with the requirement, but is unable to do so because of the unavailability of health care professionals in the area.

**§ 488.112 Temporary waivers of nurse staffing requirements for intermediate care facilities.**

(a) An intermediate care facility that does not meet the condition of participation for nursing services at § 483.30(c) may be granted a waiver of this condition if the results of a survey under this Part reveal that there is no standard or condition deficiency with respect to § 483.25.

(b) A waiver under this section is granted for a period of six months.

(c) The facility is resurveyed every six months, so long as a waiver remains in effect, to assure that the quality of care in the facility remains acceptable.

(d) A facility that fails, upon survey, to demonstrate that it is providing quality care must meet the staffing requirements in § 483.30(c) to continue participation.

**§ 488.115 Remote facility variances for Medicare utilization review requirements.**

(a) *Applicability.* This section applies only to facilities participating in the Medicare program. Comparable requirements for Medicaid facilities are set forth in Part 456, Subpart H, of this chapter.

(b) *Definitions.* As used in this section—

An "available" individual is one who—

(1) Possesses the necessary professional qualifications;

(2) Is not precluded from participating by reason of financial interest in any such facility or direct responsibility for the care of the residents being reviewed or, in the case of a skilled nursing facility, employment by the facility; and

(3) Is not precluded from effective participation by the distance between the facility and his residence, office, or other place of work. An individual whose residence, office, or other place of work is more than approximately one hour's travel time from the facility is considered precluded from effective participation.

"Adjacent facility" means a health care facility located within a 50-mile radius of the facility that requests a variance.

(c) *Basis for granting a variance.* HCFA may grant a variance from the applicable time frames for beginning and completing utilization reviews of all cases, as set forth in the Conditions of Participation for hospitals and for SNFs, if the facility shows, to HCFA's satisfaction, that it was unable to comply with one or more of the requirements because sufficient medical and other professional personnel were not available to conduct the utilization reviews.

## PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

D. 1. The authority citation for Part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh).

**§ 489.15 and 489.16 [Removed and Reserved]**

2. In Part 489, Subpart A, §§ 489.15 and 489.16 are removed and reserved.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Programs; No. 13.773, Medicare—Hospital Insurance Programs; and No. 13.774, Medicare—Supplemental Medical Insurance.)

**Editorial note.** This document was received at the Office of the Federal Register November 13, 1987.

Dated: April 13, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: June 12, 1987.

**Otis R. Bowen,**

*Secretary.*

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Part V

# Environmental Protection Agency

40 CFR Parts 264 and 265

Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee; Final Rule

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 264 and 265

[FRL-3224-6]

### Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** On August 21, 1985, the Environmental Protection Agency (EPA or the Agency) published a Notice of Proposed Rulemaking to amend the financial responsibility requirements concerning liability coverage for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) (50 FR 33902). The proposal set forth several regulatory options under consideration by the Agency to provide relief for owners and operators who have encountered difficulties in obtaining insurance necessary to comply with the liability coverage requirements. On July 11, 1986, EPA published an Interim Final Rule to allow use of a corporate guarantee as an additional financial responsibility mechanism (51 FR 25350). That Interim Final Rule became effective on September 9, 1986. EPA is today finalizing that rule with a number of minor revisions. The Agency is adding an explicit provision that the guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities. In addition, the Agency is allowing use of the guarantee by firms incorporated outside the United States if (1) the Attorney General or Insurance Commissioner in each State where a facility covered by the guarantee is located, and in the State in which the guarantor has its principal place of business, has advised EPA, in writing, that the corporate guarantee as specified in these regulations is a fully valid and enforceable obligation in that State; and (2) the non-U.S. corporation has identified an agent for service of process in each such State. The Agency is removing the choice of law provision from the guarantee form, in part to enable foreign firms to use the corporate guarantee, but also to allow use of a single corporate guarantee for liability coverage, closure, and post-closure care. A number of exclusions to the corporate guarantee instrument also have been added to the final version of the text. These exclusions, patterned after the existing standard exclusions used by insurers in their policies, are intended to ensure that funds assured by the corporate guarantee will be used only to pay for bodily injury or property damage suffered by third parties as a result of accidental occurrences at hazardous waste treatment, storage and disposal operations.

**EFFECTIVE DATE:** These regulations shall become effective December 18, 1987, in order to allow owners or operators to begin use of the revised corporate guarantee as soon as possible. Firms that, prior to the effective date of this Notice, have secured a corporate guarantee in accordance with the Interim Final Rule requirements that became effective on September 9, 1986, are not required to revise their corporate guarantees to conform to this Final Rule.

**ADDRESSES:** The public docket for this rulemaking is available for public inspection in Room S-212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. The docket number is F-86-CGIF-FFFFF. The public must make an appointment to review docket materials by calling (202) 475-9327. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** The RCRA Hotline, toll free, at (800) 424-9346 or in Washington, DC at (202) 382-3000. For technical information, contact Carlos M. Lago, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, (202) 382-4780.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline:



## I. Authority

This regulation is being promulgated under the authority of sections 2002(a), 3004, and 3005 of the Solid Waste Disposal Act; as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6912(a), 6924, and 6925).

## II. Background

### *A. Current Liability Coverage Requirements*

Section 3004(a)(6) of the Resource Conservation and Recovery Act (RCRA), as amended, requires EPA to establish financial responsibility standards for owners and operators of hazardous waste management facilities as may be necessary or desirable to protect human health and the environment.

On April 16, 1982, EPA promulgated regulations requiring owners or operators to demonstrate liability coverage during the operating life of the facility for bodily injury and/or property damage to third parties resulting from accidental occurrences arising from facility operations (47 FR 16554). The April 1982 regulations allowed use of liability insurance or a financial test to provide financial assurance of liability coverage. Under the liability coverage regulations (40 CFR 264.147 and 265.147), an owner or operator of a hazardous waste treatment, storage, or disposal facility must demonstrate, on a per-firm basis, liability coverage for sudden accidental occurrences in the amount of $1 million per occurrence and $2 million annual aggregate, exclusive of legal defense costs. An owner or operator of a surface impoundment, landfill, or land treatment facility used to manage hazardous waste is also required to demonstrate, on a per-firm basis, liability coverage for nonsudden accidental occurrences in the amount of $3 million per occurrence and $6 million annual aggregate, exclusive of legal defense costs. "First-dollar" coverage is required; that is, the amount of any deductible must be covered by the insurer, who may have a right of reimbursement of the deductible amount from the insured.

The requirements for coverage of sudden accidental occurrences became effective on July 15, 1982. The requirements for nonsudden accidental occurrences were phased in gradually according to annual dollar sales or revenue figures of the owner or operator. January 16, 1985, was the final phase-in date.

### *B. August 21, 1985 Notice of Proposed Rulemaking*

Some owners and operators have encountered difficulties in obtaining insurance necessary to comply with the liability coverage requirements. In a Notice of Proposed Rulemaking (NPRM) published by EPA on August 21, 1985 (50 FR 33902), the Agency announced that it was considering taking one or a

combination of the following five regulatory actions in response to this problem:

(1) Maintain the existing requirements;

(2) Clarify the required scope of coverage and/or lower the required levels of coverage;

(3) Authorize other financial responsibility mechanisms;

(4) Authorize waivers; and

(5) Suspend or withdraw the liability coverage requirements.

As discussed below, EPA subsequently decided to allow use of a corporate guarantee to satisfy the liability assurance requirements. EPA is continuing to study other options for assuring liability coverage and plans another rulemaking to authorize other financial mechanisms in the near future.

*C. July 11, 1986 Interim Final Rule*

A number of commenters on the August 21, 1985 NPRM encouraged EPA to authorize a corporate guarantee for liability coverage. A corporate guarantee is an instrument by which a firm capable of passing the financial test for liability promises to pay the obligations of the owner or operator if the owner or operator does not do so. On July 11, 1986, in order to enable more firms to comply with the liability coverage required during a facility's operating life, the Agency issued an interim final rule, revising 40 CFR 264.147, 264.151, and 265.147, to authorize, in addition to insurance and the financial test, the use of a corporate guarantee for liability coverage (51 FR 25350). Under this regulation, a parent firm that is able to pass the financial test for liability coverage issues a guarantee on behalf of its subsidiary in which the parent promises to satisfy third-party liability judgments or claims if the subsidiary does not do so. Authorization of a corporate guarantee for liability provides owners and operators with greater flexibility in complying with liability coverage requirements, while still ensuring that funds are available to pay third-party liability claims. EPA's closure and post-closure financial responsibility regulations (40 CFR 264.143(f), 264.145(f), 265.143(e) and 265.145(e)) allow use of a parent corporate guarantee. Furthermore, in the Hazardous and Solid Waste Amendments of 1984 (HSWA), Congress provided that RCRA financial responsibility for liability coverage could be established by, among other options, guarantees and self-insurance (HSWA section 205; section 3004(t) of RCRA).

*D. Comments and Responses on July 11, 1986 Interim Final Rule on Corporate Guarantee*

In the Preamble to the July 11, 1986 Interim Final Rule, EPA indicated that because it was authorizing the use of a corporate guarantee for liability that differed in several ways from the corporate guarantee for closure and post-closure care, it was soliciting additional comments on the liability guarantee. EPA promulgated a general guarantee designed to assure payment of tortious, rather than contractual, obligations to as-yet-to-be-determined third parties. Due to the unusual nature of the guarantee the Agency requested comments on whether any modifications to the wording of the guarantee would be desirable to facilitate the payment of claims made by injured third parties against guarantors. Few comments were received on the text of the guarantee. Although the Agency did not solicit comments on issues not raised by the Interim Final Rule, some commenters addressed the liability coverage requirements in 40 CFR 264.147 and 265.147.

A majority of the commenters endorsed the Agency's decision to allow the corporate guarantee as a mechanism to comply with third-party liability requirements. Several commenters specifically supported the text of the guarantee in the Interim Final Rule. However, in response to other comments, discussed below, and as a result of analysis conducted by EPA, the Agency has determined that certain minor changes to the guarantee form are desirable. Firms that, prior to the effective date of today's Final Rule, have secured a corporate guarantee in accordance with the requirements that became effective on September 9, 1986, will not be required to revise their corporate guarantees to conform to the guarantee form in the Final Rule. These firms, however, may wish to change the language of their guarantee to specify the "occurrence" and "annual aggregate" levels of coverage provided by the guarantee, as required in § 264.151(h)(2) paragraph 2 of today's rule.

In the July 11, 1986 Interim Final Rule, EPA noted that the corporate guarantee for liability coverage differs from the corporate guarantee for closure or post-closure care in several ways. The most important difference is that the guarantee is not made to the Environmental Protection Agency, as obligee. Instead, the corporate guarantee for liability coverage is made by the corporate parent on behalf of the owner or operator "to any and all third parties who have sustained or may sustain bodily injury or property damage caused by (sudden and/or nonsudden) accidental occurrences arising from operations of the facilities covered by [the] guarantee." Several comments addressed various aspects of this provision.

One commenter argued that the language was too broad. The commenter encouraged EPA to define "bodily injury or property damage" so that the rule specifies the risks that will be covered. The commenter argued that a safeguard is needed against the possibility that claims for payment by the guarantor will be made for third-party incidents that do not arise from the hazardous waste activities at the facility. According to the commenter, a limit on liability will not protect guarantors from this problem.

EPA is aware that pollution liability insurance policies generally exclude from coverage certain claims for bodily injury and property damage, including claims covered by workers' compensation, employers' liability claims, and claims arising from the operation of motor vehicles. The Agency believes it is appropriate to incorporate some exclusions into the corporate guarantee, in order to limit the number and scope of possible interpretations of the coverage provided by the corporate guarantee. The exclusions included in today's rule are based upon EPA's review of standard environmental impairment liability (EIL) contracts. The purpose or operation of each exclusion is explained in section III of this preamble.

In the July 11, 1986 Interim Final Rule, owners and operators were required to specify the level of coverage provided for third party liabilities arising from sudden and nonsudden accidental occurrences. In today's rule, EPA is modifying the language of the guarantee instrument to require owners and operators to specify both the "each occurrence" and "annual aggregate" levels of coverage provided. The modification was necessary to establish a limit on liability provided for an individual occurrence. Without the specified occurrence limit, a single claim could exhaust the total annual aggregate coverage.

This modified language is consistent with the language in the Hazardous Waste Facility Liability Endorsement and the Hazardous Waste Facility Certificate of Liability in § 264.151 (i)(1) and (j)(1) respectively.

EPA noted in the preamble to the July 11, 1986 Interim Final Rule that it had modified the cancellation provision found in the corporate guarantee for

closure and post-closure care. Under the cancellation provision in the corporate guarantee for liability, a guarantor cannot terminate a liability coverage guarantee unless and until the owner or operator obtains alternative liability coverage and that coverage is approved by the EPA Regional Administrator for the Region in which the facility is located. (If facilities are located in more than one Region, the Regional Administrator of each such Region must approve.) One commenter noted that the rule allows termination of the contract upon acquisition of insurance coverage, and was concerned that, if the guarantee were replaced by a claims-made insurance policy, a gap in liability coverage could be created. The gap would consist of the period of time in which the guarantee had been in effect, because upon termination of the guarantee, the parent corporation would no longer be required to guarantee the availability of funds for injuries that had been sustained during the term of the guarantee contract and because this period also would not be covered by an ordinary claims-made policy. Since most pollution liability insurance is now provided by environmental impairment liability (EIL) policies, which are generally offered on a claims-made basis only, the Agency agrees that "claims-made" insurance policies may present special problems. EPA expects to examine them more closely in the future but does not feel the turnover from corporate guarantee to insurance will occur with such frequency as to warrant further regulatory change at this time.

Another commenter suggested that the corporate guarantee does not state clearly when the guarantee terminates, if, for example, the facility closes. The Agency does not consider this necessary within the guarantee regulations because under 40 CFR 264.147(e) and 265.147(e), general procedures exist for determining when financial assurance can be terminated. These procedures apply regardless of the assurance mechanism that is used. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator that he is no longer required to maintain liability coverage for that facility.

In the July 11, 1986 Interim Final Rule, EPA included a requirement, referred to as a "choice of law" provision, that is not found in the corporate guarantee for closure and post-closure care. A choice of law provision is a clause in a legal instrument in which the parties specify that the law of a certain State is to be applied to any dispute arising from the instrument. The choice of law provision in the Interim Final Rule required that the guarantee be interpreted and enforced in accordance with the laws of the State of incorporation of the guarantor.

Commenters expressed concern about the choice of law provision in the July 11 guarantee. A State environmental protection agency argued, regarding the choice of law provision, that by requiring a guarantee to be construed under the law of the State of the guarantor's incorporation, EPA might make it more difficult for claimants to collect funds from a guarantor than it would be if the instrument was construed according to the law of the State where the event leading to the third-party liability claim occurred. This would be true, the commenter stated, if the parent corporation, as guarantor, successfully requested removal of a liability action to the jurisdiction of its incorporation. In that circumstance, a claimant could be forced to press his claim in a court considerably distant from his home and from the site of the occurrence. Because of this possibility, the commenter asked that the law of the State where the facility operates be used to interpret the terms of the guarantee rather than the law of the guarantor's State of incorporation.

EPA is not convinced that the concern expressed by the commenter about the removal of cases from one jurisdiction to another is well-founded. Choice of law provisions in contractual agreements, like guarantees, normally are not legal grounds for the removal of claims from one jurisdiction to another. EPA agrees, however, that it is desirable for the guarantee to be interpreted according to the place where the harm occurred, if possible.

The Agency also recognizes that the choice of law provision, as it was included in the July 11, 1986 Interim Final Rule, did pose two significant problems. First, the effect of the rule on guarantees by or claims against corporations incorporated outside of the United States was unclear. The rule could have been interpreted to require application of the law of the country in which a non-U.S. parent corporation is incorporated. Alternatively, it might have been interpreted to preclude use of the corporate guarantee by non-U.S. corporations. Second, because the corporate guarantees for closure and post-closure care do not contain a choice of law provision, problems could have arisen if the coverage for closure and post-closure care and the coverage for liability were combined in one corporate guarantee instrument.

The Agency initially included the choice of law provision because of concern that conflict might develop where one guarantee is used to cover facilities in more than one State. Absent a choice of law provision, guarantors and third-party claimants could disagree about what State's law should be used to interpret the terms of the guarantee. In addition, the terms of a single guarantee might be interpreted in conflicting ways by different States.

The Agency has decided, however, that these potential problems are outweighed by the difficulties discussed above that may arise from requiring application of the law of the guarantor's State of incorporation. Therefore, in order to resolve the problems discussed above, and to help to ensure that one guarantee can be used for closure, post-closure and liability, the Agency has decided to eliminate the choice of law clause from the corporate guarantee form for liability coverage.

The second problem raised by the State commenter was that the rule did not clearly specify whether a State with a delegated RCRA program will be required to modify its program in order to permit use of the proposed mechanism if it is deemed valid and enforceable in the State. The commenter suggested that if a State did not find the use of the parent corporate guarantee to be a prudent financial responsibility mechanism in a particular situation, the State should be allowed the discretion to reject the parent guarantee despite its conformity with the final rule.

As EPA explained in the Interim Final Rule, the rule will be automatically applicable only in those States that do not have final authorization. In authorized States, the corporate guarantee for liability requirements will not be applicable unless and until the State revises its program to adopt equivalent requirements under State law. Furthermore, because these corporate guarantee requirements are considered to be less stringent than the existing Federal requirements, authorized States are not required to modify their programs to adopt equivalent or substantially equivalent provisons.

In the July 11, 1986, Interim Final Rule, EPA provided that the corporate guarantee could be used to fulfill liability coverage requirements only if the Attorney General or Insurance Commissioner of the State in which the guarantor is incorporated and of each

State in which a facility covered by the guarantee is located have submitted written statements to EPA that a corporate guarantee executed as required is a legally valid and enforceable obligation in those States.

A commenter on this requirement stated that the corporate statutes of almost all States specifically empower corporations to enter into guarantee agreements. (The commenter attached a list of the pertinent provisions of State corporate statutes.) The commenter, therefore, saw no need for EPA to limit use of the corporate guarantee to facilities in States where the State Attorney General or State Insurance Commissioner has certified to EPA that the guarantee is fully valid and enforceable by third parties who are injured by accidents arising from the operations of the facility involved.

EPA agrees that State corporation law is not likely to present substantial obstacles to the use of the corporate guarantee for liability coverage. The Agency is concerned, however, that State insurance law may preclude use of the corporate guarantee. At least one State has notified EPA that a corporation seeking to use the guarantee for liability coverage will be required to qualify as an insurer under State law. Therefore, EPA is continuing to require that certification be obtained from the State Attorney General or State Insurance Commissioner before the guarantee may be used in that State.

In connection with certification, a commenter urged EPA to make efforts to ensure the cooperation of the States in authorizing the corporate guarantee. EPA has sought in several ways to obtain information from the States concerning the validity and enforceability of the guarantee. Letters were sent to the Attorneys General of all States and Territories asking for an opinion on the guarantee. In addition, all State Attorneys General have been contacted by telephone to encourage their response to EPA's questions. Finally, in States where the law mandates that the Attorney General may respond only to a request for an opinion from a member of the State's government, EPA has encouraged State environmental officials to obtain such an opinion.

As of October 5, 1987, EPA has obtained responses from the following 28 States indicating that the corporate guarantee for liability would be valid and enforceable:

| | |
|---|---|
| Arkansas | Delaware |
| California | District of Columbia |
| Colorado | Florida |
| Connecticut | Georgia |
| Hawaii | Montana |
| Idaho | Nevada |
| Illinois | New Hampshire |
| Iowa | New Mexico |
| Kansas | New York |
| Kentucky | South Carolina |
| Louisiana | Vermont |
| Maine | Virginia |
| Maryland | Virgin Islands |
| Missouri | Wyoming |

EPA will update this list periodically and furnish the updated lists by means of publication in the **Federal Register** and through the RCRA Hotline at (800) 424–9346 or in Washington, DC, at 382–3000.

In the July 11, 1986, Interim Final Rule, the Agency announced that it would allow use of the corporate guarantee only if the guarantor is the parent corporation of the owner or operator. Parent corporations are defined for this purpose by 40 CFR 264.141(d) as directly owning at least 50 percent of the voting stock of the firm that owns or operates the facility; the latter firm is deemed a "subsidiary" of the parent corporation.

Two commenters objected to the Agency's decision regarding the parent corporation. One commenter endorsed the use of the corporate guarantee, but urged that the rule be expanded to allow the guarantee to be given by any "affiliate" of the owner or operator. The commenter also suggested that the guarantee should be available in multiple ownership situations (i.e., to allow joint and several guarantees by two or more corporate owners). A second commenter disputed the Agency's rationale that an immediate parent will have a stronger interest in ensuring the obligations of a subsidiary than an indirect parent in another tier of the corporate structure. The commenter urged the Agency to approve the use of the corporate guarantee by other firms in the corporate structure in States where the legal requirements could reasonably be met. This commenter urged, for example, that a firm that shares a common parent with the owner or operator be allowed to provide a guarantee.

In development of a separate rulemaking, EPA is examining issues related to allowing affiliated corporations that do not qualify as parent corporations under 40 CFR 264.141(d) to provide financial assurance for liability coverage. For today's rulemaking, however, the Agency is retaining the requirement that only corporate parents may provide the guarantee.

Another commenter requested that the rule be modified to ensure that a parent corporation that is incorporated abroad is subject to enforcement proceedings and execution of judgment in the U.S. To subject a non-U.S. corporate guarantor to U.S. State court jurisdiction and enforcement proceedings, the rule requires that the non-U.S. corporation identify a registered agent within each State where a facility covered by the guarantee is located. EPA is also adding a requirement that the non-U.S. corporate guarantor appoint an agent in the State in which it has its principal place of business. The function of the agents is to accept service of process for the guarantor corporation for legal actions in a given State. The Agency believes that under current case law the presence of the firm's agent in combination with the activities of the firm in the State will subject it to the jurisdiction of the States' courts.

The Agency does not think that requiring a non-U.S. corporate guarantor to appoint a registered agent to accept service of process for legal actions in a given State is an onerous requirement. The use of registered agents is a common business practice for out-of-state firms. To ascertain the cost of such a practice, a number of firms that act as registered agents for companies domiciled out-of-state were contacted. An overwhelming majority of firms contacted charge a minimal flat fee which, in the Agency's view, has a minor financial impact on non-U.S. firms planning to provide this corporate guarantee.

In addition, the financial test that must be passed by every corporation seeking to become a guarantor requires the corporation to demonstrate that it has assets in the United States amounting to either: (1) At least 90 percent of its total assets, or (2) at least six times the amount of liability coverage that must be demonstrated through the financial test. The Agency believes that this provision adequately ensures that substantial assets are available in the United States to be levied against if a judgment is entered against the non-U.S. guarantor corporation. Assessing this provision together with the registered agent requirement, the Agency considers it unnecessary to add regulatory language to ensure the coverage of non-U.S. corporations by U.S. legal processes.

The Agency's Interim Final Rule did not allow a corporate subsidiary to use the financial test for part of the required liability coverage and to rely on the corporate guarantee for the balance of the required coverage. EPA noted that separately audited financial statements are not ordinarily prepared for subsidiaries. Two commenters addressed this issue, urging the Agency to allow this combination. One of the

commenters argued that problems of double-counting of the subsidiary's assets could be avoided if the subsidiary prepared a separately audited financial statement. EPA continues to believe, however, that the problem of potential double-counting of assets makes such combinations unreliable. Therefore, the Agency is not revising the Interim Final Rule to allow them.

One commenter asked that EPA allow companies the flexibility of providing either a single guarantee addressing both closure/post-closure care costs and third-party liability, or using separate documents. Another commenter suggested that the Agency amend the "Letter from the Chief Financial Officer" required under 40 CFR 264.151(g) to identify the highest limit of the liability coverage imposed by any regulation.

EPA, as noted above, has deleted the choice of law provision from the corporate guarantee for liability in order to help to ensure that a single corporate guarantee covering closure, post-closure care, and liability coverage can be used. Existing regulations, particularly 40 CFR 264.151(g), require parent corporations who make a corporate guarantee to disclose all the financial assurance requirements the corporate guarantee covers. They must also disclose any financial assurance obligations they have in regard to any hazardous waste facilities the parent corporation owns and operates directly. This information must be contained in the letter from the chief financial officer required by 40 CFR 264.151(f) or (g) in support of an application to pass the financial test. Therefore, no rule change was considered necessary.

One commenter requested that the Agency exercise its prosecutorial discretion in taking enforcement actions against facilities that lost interim status on November 8, 1985, if they were unable to meet financial responsibility requirements. The commenter noted that some of those firms might now be able to come into full compliance by use of the corporate guarantee and recommended that EPA issue Interim Status Compliance Letters to such owners or operators.

EPA cannot issue Interim Status Compliance Letters to owners or operators of land disposal facilities that lost interim status because they could not certify liability coverage. In accordance with section 3005(e)(2), the interim status of these facilities was terminated if the facilities were not in compliance with all ground-water monitoring and financial responsibility requirements by the statutory deadline of November 8, 1985. Because the interim status of these facilities was terminated by operation of the law, EPA cannot exercise enforcement discretion such as the commenter requested. However, such facilities may apply for a permit subsequently, and if they are granted a permit, may begin to operate again as soon as it is issued.

Finally, one commenter recommended that while the guarantee may be for a specific sum, it should be made clear that the guarantee should not be considered to operate as a limitation of liability under established concepts of strict liability and corporate responsibility. EPA agrees with the commenter, and does not intend the existence of the corporate guarantee to serve as a defense for a corporate parent to claims brought under established principles of law and not related to the guarantee. The text of the guarantee, therefore, is being amended to state that the guarantee is a separate and distinct obligation that does not affect or limit any other responsibility or liability of the guarantor with respect to the covered facilities.

A number of commenters recommended actions for EPA that in the Agency's opinion are outside the scope of the July 11, 1986, request for comments, but afford EPA an opportunity to present useful information.

Two commenters, who expressed support for the corporate guarantee, also urged EPA to consider additional mechanisms such as indemnity contracts, surety bonds, and trust funds and to allow combinations of various mechanisms. EPA agrees that a broad selection of liability coverage mechanisms could help to ensure that owners or operators are able to satisfy the coverage requirements, and is currently developing a rule to authorize additional options for liability coverage.

Two other commenters added that the Agency should adjust the "six times multiplier" requirement in the financial test to make the test more available to the regulated community. The Agency is currently analyzing certain aspects of the financial test for liability.

### III. Changes From the July 11, 1986, Interim Final Rule

EPA is making the following changes in the corporate guarantee form contained in the July 11, 1986, Interim Final Rule:

(1) The statement of coverage provided in the corporate guarantee instrument in § 264.151(h)(2), paragraph 2 is being modified to include spaces for the guarantor to specify "each occurrence" and "annual aggregate" levels of coverage.

(2) The choice of law provision formerly contained in 40 CFR 264.151(h)(2) paragraph 10 of the guarantee form is being removed and the subsequent paragraphs of the form are being renumbered to reflect the change;

(3) In § 264.151(h)(2), a new paragraph 11 is being added in which the guarantor stipulates that the guarantee is in addition to and does not affect any other responsibility of the guarantor for liability with respect to the covered facilities; and

(4) In § 264.151(h)(2), a new paragraph 12 is being added that provides that the guarantee does not apply to certain categories of damages or obligations. These exclusions are patterned on the existing standard exclusions used by insurers in their comprehensive general liability (CGL) policies, and are intended to ensure that the coverage is not exhausted by the payment of claims that are covered by other compensation systems or that are otherwise not intended to be included within the scope of coverage.

Exclusion (i), for bodily injury or property damage for which the owner or operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement, is intended to exclude liabilities assumed by contract that do not involve the hazardous waste treatment, storage, and disposal facility or facilities of the owner or operator. It does not exclude settlements or other agreements to pay damages in connection with accidental occurrences resulting in bodily injury or property damage caused by hazardous waste.

Exclusion (ii), for obligations under workers' compensation, disability benefits, or unemployment compensation law or similar law, is intended to ensure that the corporate guarantee for liability is available for third parties and does not duplicate coverage provided under these other programs or forms of assurance.

Exclusion (iii), for bodily injury to the employees, or the immediate family of employees, of the owner or operator, is also intended to ensure that the corporate guarantee is available for third parties and does not duplicate coverage provided under other forms of assurance.

Exclusion (iv), for bodily injury or property damage arising out of the ownership or use of any aircraft, motor vehicle, or watercraft, is to prevent use of the guarantee for routine accidents that are not directly related to management of hazardous waste.

Exclusion (v) for property damage to property owned, occupied, rented, or in

the care, custody, or control of the owner or operator, is intended to ensure that the guarantee will be available to compensate third parties, and not the owner or operator, for property damage as a result of activities at TSDFs.

The Agency did not adopt all the standard comprehensive general liability (CGL) exclusions. Only those exclusions the Agency considered relevant to the corporate guarantee for liability were included.

## IV. State Authority

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

### *A. Effect on State Authorizations*

Today's rule promulgates standards that are not effective in authorized States since the requirements are not being imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, the requirements will applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. The deadline by which the State must modify its program to adopt today's rule is 7/1/89. These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of EPA until the State program modification is submitted to EPA and approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

States that submit their official application for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of those standards must include standards equivalent to these standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.1(k).

The standards promulgated today are less stringent than the existing Federal requirements. Therefore, authorized States are not required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions listed above. However, authorized States that have already adopted the July 11, 1986, Interim Final Rule must revise their program and adopt today's rule, since today's rule is more stringent in some respects than the Interim Final Rule.

## V. Executive Order No. 12291

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order No. 12291. Under Executive Order No. 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement of a Regulatory Impact Analysis. The notice published today is not major because the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices (but is likely to decrease costs), will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order.

## VI. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2050–0036.

## VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), Federal Agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). This rule relaxes the existing insurance requirements and thus reduces costs associated with compliance.

Accordingly, I certify that this proposed regulation will not have a significant impact on a substantial number of small entities.

## VIII. Supporting Documents

Supporting documents available for this Final Rule include comments on the August 21, 1985 Proposed Rule, a summary of the comments on the July 11, 1986 Interim Final Rule, and background documents on the financial test for liability coverage. In addition, background documents prepared for previous financial assurance regulations are also available, as are the letters received from the State Attorneys

General concerning the corporate guarantee for liability.

All of these supporting materials are available for review in the EPA public docket (RCRA docket #F-87-CGF-FFFFF), Room S-212, Waterside Mall, 401 M Street SW., Washington, DC, 20460.

**List of Subjects**

*40 CFR Part 264*

Hazardous waste, Insurance, Packaging and containers, reporting and recordkeeping requirements, Security measures, Surety bonds.

*40 CFR Part 265*

Hazardous waste, Insurance, Packaging and containers, reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

Date: November 6, 1987.

**Lee M. Thomas,**

*Administrator.*

For the reasons set out in the preamble, the interim rule amending 40 CFR Parts 264 and 265 which was published at 51 FR 25350-25356 on July 11, 1986, is adopted as a final rule with the following changes:

## PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES: LIABILITY COVERAGE

1. The authority citation for Part 264 is revised to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. In § 264.147, paragraph (g)(2) is revised to read as follows:

**§ 264.147 Liability requirements.**

(g) * * *

(2)(i) In the case of corporations incorporated in the United States, a corporate guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of (A) the State in which the guarantor is incorporated, and (B) each State in which a facility covered by the guarantee is located have submitted a written statement to EPA that a corporate guarantee executed as described in this section and § 264.151(h)(2) is a legally valid and enforceable obligation in that State.

(ii) In the case of corporations incorporated outside the United States, a corporate guarantee may be used to satisfy the requirements of this section only if (A) the non-U.S. corporation has identified a registered agent for service of process in each State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business, and (B) the Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to EPA that a corporate guarantee executed as described in this section and § 264.151(h)(2) is a legally valid and enforceable obligation in that State.

* * * * *

2. Section 264.151 is amended by revising paragraph (h)(2) to read as follows:

**§ 264.151 Wording of the instruments.**

* * * * *

(h) * * *

(2) A corporate guarantee, as specified in § 264.147(g) or § 265.147(g) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Corporate Guarantee for Liability Coverage**

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of ——" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of our subsidiary [owner or operator] of [business address], to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

**Recitals**

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.147(g) and 265.147(g).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.] This corporate guarantee satisfies RCRA third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator[s] for the Region[s] in which the facility[ies] is[are] located and to [owner or operator] that he intends to provide alternate liability coverage as specified in 40 CFR 264.147 and 265.147, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

5. The guarantor agrees to notify the EPA Regional Administrator by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

6. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in 40 CFR 264.147 or 265.147 in the name of [owner or operator], unless [owner or operator] has done so.

7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 40 CFR 264.147 and 265.147, provided that such modification shall become effective only if a Regional Administrator does not disapprove the modification within 30 days of receipt of notification of the modification.

8. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of 40 CFR 264.147 and 265.147 for the above-listed facility(ies), except as provided in paragraph 9 of this agreement.

9. Guarantor may terminate this guarantee by sending notice by certified mail to the EPA Regional Administrator[s] for the Region[s] in which the facility[ies] is[are] located and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the EPA Regional Administrator[s] approve[s] alternate liability coverage complying with 40 CFR 264.147 and/or 265.147.

10. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

11. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

12. Exclusions

This corporate guarantee does not apply to:

(i) Bodily injury or property damage for which the owner or operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the owner or operator would be obligated to pay in the absence of the contract or agreement.

(ii) Any obligation of the owner or operator under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(iii) Bodily injury to:

[A] An employee of the owner or operator arising from, and in the course of, employment by the owner or operator; or

[B] The spouse, child, parent, brother or sister of that employeee as a consequence of, or arising from, and in the course of, employment by the owner or operator.

This exclusion applies:

[1] Whether the owner or operator may be liable as an employer or in any other capacity; and

[2] To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs [A] and [B].

(iv) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(v) Property damage to:

[A] Any property owned, rented, or occupied by the owner or operator;

[B] Premises that are sold, given away or abandoned by the owner or operator if the property damage arises out of any part of those premises;

[C] Property loaned to the owner or operator;

[D] Personal property in the care, custody or control of the owner or operator;

[E] That particular part of real property on which the owner or operator or any contractors or subcontractors working directly or indirectly on behalf of the owner or operator are performing operations, if the property damage arises out of these operations.

I hereby certify that the wording of the guarantee is identical to the wording specified in 40 CFR 264.151(h)(2).

Effective date:—

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

* * * * *

## PART 265—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES: LIABILITY COVERAGE

1. The authority citation for Part 265 is revised to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. In § 265.147, paragraph (g)(2) is revised to read as follows:

**§ 265.147 Liability requirements.**

* * * * *

(g) * * *

(2)(i) In the case of corporations incorporated in the United States, a corporate guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of (A) the State in which the guarantor is incorporated, and (B) each State in which a facility covered by the guarantee is located have submitted a written statement to EPA that a corporate guarantee executed as described in this section and § 264.151(h)(2) is a legally valid and enforceable obligation in that State.

(ii) In the case of corporations incorporated outside the United States, a corporate guarantee may be used to satisfy the requirements of this section only if (A) the non-U.S. corporation has identified a registered agent for service of process in each State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business, and if (B) the Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to EPA that a corporate guarantee executed as described in this section and § 264.151(h)(2) is a legally valid and enforceable obligation in that State.

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[FR Doc. 87-26267 Filed 11-17-87; 8:45 am]

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Federal Register

Wednesday
November 18, 1987

Part VI

# Department of Education

## Office of Special Education and Rehabilitative Services

## Consolidated Application Package for Fiscal Year 1988; Notice

## DEPARTMENT OF EDUCATION

### Consolidated Application Package for Fiscal Year 1988

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed annual funding priorities and notice inviting applications for certain new direct grant awards.

**SUMMARY:** The Secretary gives notice inviting applications for new direct grants under the Handicapped Children's Early Education, Program for Severely Handicapped Children, Services for Deaf-Blind Children and Youth, and Educational Media Research, Production, Distribution, and Training.

This notice consists of 5 sections. Section I provides background information and discusses the purpose of this notice. Section II contains four lists of program application notices and application information that pertains to the programs in each list. Section III provides further guidance on the application process. Section IV provides information regarding applicable procedures under Executive Order 12372, Intergovernmental Review of Federal Programs. Section V contains the basic application form and instructions for completing the form. No separate application package is necessary to apply under the programs announced in this notice.

**DATES:** The closing dates for transmitting applications under this notice are listed in section II of this notice.

**ADDRESS:** Applications are to be mailed to the following address: U.S. Department of Education, 400 Maryland Avenue, SW., Application Control Center, Washington, DC 20202. See section III for detailed information related to hand-delivered applications.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the combined notice contact A. Neal Shedd, Director, Division of Regulations Management, 400 Maryland Avenue, SW. (Room 2131, FOB–6), Washington, DC 20202. For specific information concerning a particular program, contact the Program Contact cited in the application notice in Section II applicable to that program.

*Invitation to Comment.* In addition to inviting comments on any individual notice of proposed priorities in this document, the Secretary invites interested persons to submit comments on this approach to consolidating in a single application information package application notices and application forms for a number of the Department's direct grant programs. Comments and recommendations regarding this approach should be addressed to A. Neal Shedd, Director, Division of Regulations Management, 400 Maryland Avenue, SW. (Room 2131, FOB–6), Washington, DC 20202.

This notice inviting applications for new direct grant awards contains several proposed annual funding priorities. Applicants should prepare their applications based on these proposed priorities. If there are substantive changes made to these annual funding priorities when published in final form, applicants will be given the opportunity to amend or resubmit their applications.

These estimates of funding levels do not bind the Department of Education to a specific number of grants, unless the amount is otherwise specified by statute or regulation. These funds are subject to appropriation by the Congress. No final appropriation for fiscal year 1988 has been enacted. All fiscal year 1988 appropriations could be subject to a sequester in order to reach the required deficit reduction.

#### Section I—Purpose

The purpose of this notice is to inform potential applicants of closing dates for the transmittal of applications for certain grants issued by the U.S. Department of Education. The Secretary believes that this consolidated application notice will provide advance notice of upcoming competitions sufficient to permit the Department to make awards much earlier in the fiscal year (FY).

As a pilot undertaking, this first consolidated application package covers certain selected programs. The Secretary plans to include other suitable programs in combined application packages in future fiscal years.

Application closing dates are listed in section II of this notice.

Applicants who decide to apply under one or more program priority covered by this notice should submit an application for each program priority and follow the specific instructions established for each program, as described in section II.

Closing dates and procedures may vary from program to program. The charts in section II inform potential applicant of: Title of the program; Title of program priority and Catalog of Federal Domestic Assistance (CFDA) number; Deadline for Transmittal of Applications (closing date); Deadline for Intergovernmental Review; Expected available funds; Estimated range of awards; Estimated size of awards; Estimated number of awards; and Expected project period. To ensure expeditious processing of their respective applications, applicants are particularly requested to make certain that the correct CFDA number for the priority addressed in the application appears on each application. Following the chart is the program specific information on: the purpose of the program, applicable regulations, information contact persons, description of programmatic priorities, if any, and other program information and specific application requirements not covered in the application form in section V.

#### Section II—Program Application Notices

This section contains (1) a listings of application notices for new awards for FY 1988, and (2) specific application information and requirements for individual programs.

*Paperwork Reduction Act of 1980*

This combined application package contains no new information collection requirements. The information collection requirements contained herein have been approved by the Office of Management and Budget under OMB control number 1820–0028.

HANDICAPPED CHILDREN'S EARLY EDUCATION PROGRAM

[Application Notices for Fiscal Year 1988]

| Title and CFDA No. | Deadline for transmittal of applications | Deadline for intergovernmental review | Available funds* | Estimated range of awards* | Estimated size of awards* | Estimated number of awards | Project period in months |
|---|---|---|---|---|---|---|---|
| Demonstration Projects for Integrated Preschool Services (CFDA No. 84.024A). | 2-12-88 | 4-12-88 | 4,000,000 | 80,000 to 125,000.... | 100,000 | 12[2] | Up to 36. |

HANDICAPPED CHILDREN'S EARLY EDUCATION PROGRAM—Continued

[Application Notices for Fiscal Year 1988]

| Title and CFDA No. | Deadline for transmittal of applications | Deadline for intergovernmental review | Available funds* | Estimated range of awards* | Estimated size of awards* | Estimated number of awards | Project period in months |
|---|---|---|---|---|---|---|---|
| Demonstration Projects for Methodology for Serving Infants and Toddlers with Specific Disabilities (CFDA No. 84.024F). | 2-12-88 | 4-12-88 | 1,800,000 | 80,000 to 125,000.... | 100,000 | 5[2] | Up to 36. |
| National Outreach Projects (CFDA No. 84.024C). | 1-29-88 | 3-29-88 | 2,000,000 | 100,000 to 125,000. | 110,000 | 18 | Up to 36. |
| State-wide Outreach Projects (CFDA No. 84.024E). | 2-05-88 | 4-05-88 | 2,000,000 | 100,000 to 125,000. | 110,000 | 18 | Up to 36. |
| Nondirected Experimental Projects (CFDA No. 84.024G). | 3-11-88 | 5-11-88 | 1,600,000 | 80,000 to 120,000.... | 100,000 | 5[2] | Up to 36. |
| Experimental Projects on Compensatory Strategies (CFDA No. 84.024H). | 3-11-88 | 5-11-88 | 1,000,000 | 80,000 to 120,000.... | 100,000 | 3[2] | Up to 36. |
| Approaches for Instructing and Maintaining Students with Handicaps in General Education Classrooms (CFDA No. 84.024J). | 2-19-88 | 4-20-88 | 1,500,000 | 130,000 to 170,000. | 150,000 | 10 | Up to 36. |
| Early Childhood Research Institute—Transitions (CFDA No. 84.024U). | 3-14-88 | 5-14-88 | 700,000 | 650,000 to 750,000. | 700,000 | 1 | Up to 60. |
| Early Childhood Research Institute—Intervention (CFDA No. 84.024S). | 3-14-88 | 5-14-88 | 700,000 | 650,000 to 750,000. | 700,000 | 1 | Up to 60. |

[1] These are estimates. The actual amount available for awards and the size of awards cannot be determined pending final action by the Congress.
[2] Anticipated to be fully funded for 36 months in fiscal year 1988.

*Title of Program:* Handicapped Children's Early Education Progam.

*CFDA No.:* 84.024.

*Purpose:* To provide Federal support for a variety of activities designed to address the special problems of infants and children with handicaps, from birth through eight years of age, including demonstration, outreach, and experimental projects, research and training activities, and two early childhood research institutes.

*Applicable Regulations:* (a) The regulations for the Handicapped Children's Early Education Program, 34 CFR Part 309, as amended August 11, 1987 (52 FR 29816), (b) the Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79); and (c) when adopted in final form, the annual funding priorities for this program. Applicants should prepare their applications based on the program regulations and the proposed priorities. If there are substantive changes made when the final annual funding priorities are published, applicants will be given the opportunity to amend or resubmit their applications.

*Proposed Priorities:* In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference under the Handicapped Children's Early Education Program, CFDA 84.024, for fiscal year 1988 to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet these priorities.

*Priority 1: Demonstration Projects for Integrated Preschool Services* (CFDA No. 84.024A)

This priority supports projects that provide models for integrated preschool services in which children with handicaps receive education and related services alongside nonhandicapped children of the same or similar ages. Proposed projects under this priority must design models to enable preschool-aged children with handicaps to achieve their optimal functioning level within nomalized, nonsegregated, least restrictive environment. These models should implement policies of State and local agencies and that can be transferred to and used by a State educational agency to develop or improve local services under the State's administration of the Preschool Grant Program (Section 619 of the Education of the Handicapped Act, as amended).

*Priority 2: Demonstration Project for Methodology for Serving Infants and Toddlers with Specific Disabilities* (CFDA No. 84.024F)

This priority supports demonstration projects that develop and implement new and improved procedures for serving infants and toddlers with specific disability conditions for which current practices may not be appropriate or adequately developed. Projects may focus on any defined group of infants for whom applicants demonstrate existing procedures to be inadequate, including those with Down's syndrome, cerebral palsy, extremely low birth weight of less than 750 grams, extremely low birth weight in combination with other medical conditions such as bronchialpulmonary dysplasia (BPD), or myleomeningecele. Projects supported under this priority must develop a service model that demonstrates and evaluates the effectiveness of the new and improved procedures.

*Priority 3: National Outreach Projects* (CFDA No. 84.024C)

This priority supports projects that implement in multiple States proven infant, toddler or early childhood models, or selected components of those models. Projects supported under this priority must:

(1) Coordinate through the State education agency (for preschool projects) or through the lead agency for the Early Intervention Program for Infants, and Toddlers with Handicaps under Part H of the Act in each State in which outreach activities will be implemented; and

(2) Disseminate and replicate those proven models, or components of models, that establish services needed to assist infants, toddlers, or preschool-aged children to achieve their optimal functioning level within normalized, nonsegregated, least restrictive environments. These services must, at a minimum, contain the following components:

(i) Curricula relevant to programming in nomalized settings including provision for skills necessary to function in current and future educational and community environments;

(ii) Team-based programming that integrates the input of parents, teachers, and various therapeutic and other professional disciplines; and

(iii) Effective involvement of families in the planning and delivery of services for infants, toddlers, or preschool-aged children.

*Priority 4: State-wide Outreach Projects* (CFDA No. 84.024E)

This priority supports projects that implement throughout a specific State proven infant, toddler or early childhood models, or selected components of those models. Projects supported under this priority must:

(1) Disseminate and replicate, in conjunction with the appropriate State agency, activities to improve the quality of early intervention or special education and related services provided throughout the State for infants, toddlers, or preschool-aged children;

(2) Disseminate and replicate those proven models, or components of models, that establish services needed to assist infants, toddlers, or preschool-aged children to achieve their optimal functioning. Services must at a minimum contain the following components:

(i) Curricula relevant to programming in normalized setting including the provision for skills necessary to function in current and future educational and community environments;

(ii) Team-based programming that integrates the input of parents, teachers, and therapists and other professional disciplines; and

(iii) Effective involvement of families in the planning and delivery of services for infants, toddlers, or preschool-aged children.

*Priority 5: Nondirected Experimental Projects* (CFDA No. 84.024G)

This priority supports investigations of alternate strategies to reach intervention and educational objectives for children with handicaps within the ages birth through eight years. Strategies selected for comparison should include those for which information regarding their relative effectiveness is not available. Projects supported under this priority must:

(1) Compare the alternate strategies in typical service settings;

(2) Conduct the investigations using methodological procedures that will produce unambiguous findings regarding the relative effectiveness of the alternate strategies; and

(3) Design the research in a manner that will lead to improved services for children with handicaps within the ages of birth through eight years.

*Priority 6: Experimental Projects on Compensatory Strategies* (CFDA No. 84.024H)

This priority supports experimental projects that compare compensatory strategies with infants, toddlers, and children with handicaps, aged birth through eight years, for whom developmentally normative responses required in functional tasks are precluded or hindered. Projects supported under this priority must:

(1) Compare compensatory strategies that result in functional skills, such as use of motorized mobility devices, augmentative communication systems, environmental control systems, or other types of adaptations or technological applications that enable functional responding;

(2) Compare the alternate compensatory strategies in typical service settings;

(3) Conduct the investigations using methodological procedures that will produce unambiguous findings regarding the relative effectiveness of the alternate compensatory strategies; and

(4) Design the research in a manner that will lead to improved services for children with handicaps within the ages of birth through eight years.

*Priority 7: Approaches for Instructing and Maintaining Students with Handicaps in General Education Classrooms* (CFDA No. 84.024J)

This priority supports research projects to develop and test instructional approaches to be used with young students with handicaps, aged eight and below, in general education classrooms. The objective of these approaches will be to enable young students with handicaps to receive appropriate instruction within regular education settings. Specifically, projects must develop and test approaches in one of two areas:

(1) Classroom, grade or building level strategies that result in appropriate instruction within the regular classroom for all students ages eight and below including those with handicaps and other students with diverse educational needs. Strategies could include classroom, grade, or building level organizational structures, instructional strategies, management strategies, curricula, materials and equipment, teacher support strategies, and strategies for coordinating primary level instruction with any services provided at the preschool level.

(2) Strategies that ensure primary level (K–3) students with handicaps will function successfully in the upper elementary grades (4–6). Projects must focus on strategies that allow young children with handicaps who have been educated in regular education classrooms to continue in regular education through upper elementary school. Furthermore, the projects must ensure that successful strategies used with these handicapped students in primary grades are communicated and transported to the upper elementary grades in order to bring about the smooth transition across grades and the maintenance of students with handicaps in regular education.

The research design must include measures of implementation and outcome, and employ comparison buildings or classrooms where the strategy is not implemented. The research must be conducted using an overall conceptual framework and must examine the positive and negative impacts of the strategies on students with handicaps as well as their nonhandicapped peers. Multiple outcome measures including, but not limited to, academic achievement, social development, and social integration must be used. One indication of the effectiveness of the strategy would be the successful maintenance in regular education of children with handicaps.

*Priority 8: Early Childhood Research Institute—Transitions* (CFDA No. 84.024U)

This priority establishes an Early Childhood Research Institute to develop, field-test, and disseminate intervention strategies to improve the transitions that children with handicaps and their families experience during the early childhood period. The goal of the institute is to produce validated intervention procedures that service providers can use to assist children with handicaps and their families as they confront changes in services and

changes in personnel who coordinate or provide services during this period. The program of research and development must address, but need not be limited to, the transitions from hospital to home, from infant services to preschool services, from preschool services to primary grades, and from nonintegrated to integrated programs. For each of these major transitions, the research and development program must address the transitional needs of both children and families.

The institute must conduct a program of research and development to produce intervention strategies that will prevent or reduce the problems that children and families commonly experience when making the transition from hospital to home. The major problems during this period relate to continued psychological and emotional adjustments of parents and other family members, the change in emphasis from receiving medical care to locating other kinds of services, arranging for the transfer of medical information and records from the hospital to other service agencies, and the need for continuity of certain kinds of services. Although many of the transitional interventions at this stage will be directed to parents and families (rather than the child), the institute must also develop interventions that will assist the child to adjust to a different environment, through, for example, provision of some sameness in areas such as handling, interaction patterns, stimulation regimens, and physical environment as well as in other phasing-out and phasing-in procedures across settings.

The institute must also conduct a program of research and development to produce interventions that will prevent or reduce the problems that children and families experience when making the transition from infant services to preschool services, from preschool services to primary grades, and from nonintegrated to integrated programs. Intervention strategies for these transitions, while encompassing many of the transitional needs of children and families described above, must also address the stresses related to arranging for services that will be provided by different personnel and agencies, adjustments to receiving different services than were provided earlier, problems associated with working with new teams of service providers, and issues related to arranging for the receipt of services in the home, at a center, in a local school, or some combination of these during different transition periods. For the child, these transitional periods often signal a major adjustment in daily activities, from being transported to a center or school, to separation from parents for long periods, to entering an environment with other children, to adjusting to new adults, new expectations, and new rules of behavior.

In conducting the research and development activities, the institute's intervention strategies must address the kinds of stresses and demands that are commonly experienced by children and families during each transitional period, but must also be sufficiently flexible to address the unique characteristics and circumstances of particular children and families. The research and development process must produce techniques that will enable service providers to identify specific child and family problems related to each transitional period and to individualize intervention procedures that are needed. Further, the intervention strategies for children must include procedures that will develop the knowledge, skills and competencies needed by the child in new settings as well as accommodations in both current and future environments that will promote successful transitions.

As a part of its program of research and development, the institute must include studies that will (1) determine when the transitional interventions should be implemented to be most effective, (2) ascertain the effectiveness of the interventions across a variety of clients (children and families) and programs, (3) lead to models and strategies for including transitional intervention objectives in individualized family service plans and individualized education programs, and (4) identify effective methods and materials that service providers can use to monitor the outcomes associated with the interventions.

The institute must conduct the program of research and development within a conceptual framework that identifies the transitional periods to be studied; the known and hypothesized problems associated with each transitional period; initial intervention strategies that will be studied; the measurement instruments and procedures that will be used in the investigations; the relationship between planned investigations and already available knowledge, products and practices; methods of packaging and disseminating the validated intervention strategies to service delivery providers; and the relationship of each study to the objectives of this priority.

In carrying out its research and development activities, the institute must provide research training and experience for at least 10 graduate students annually.

*Period of Award*

The Secretary will approve one cooperative agreement with a project period of 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering factors in 34 CFR 75.253(a), the Secretary will also consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The services of the review team are to be performed during the last half of the institute's second year, and will replace that year's annual evaluation that the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team are to be incorporated into the applicant's proposed budget. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timeliness and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient of the cooperative agreement; and

(2) The degree to which the institute's research design and methodological procedures demonstrate the potential for producing significant new knowledge and products.

*Priority 9: Early Childhood Research Institute—Intervention* (CFDA No. 84.024S)

This priority establishes an Early Childhood Research Institute to develop, field-test, and disseminate intervention strategies for infants and toddlers with handicaps who, because of the nature of their handicapping conditions, require extended medical care and management and who may require sustained use of life-supporting technologies. The goal of the institute is to produce findings that can be used to optimize developmental well-being of these infants and toddlers in concert with the provision of intensive health care in Neonatal Intensive Care Units (NICUs), in extended care facilities for infants and toddlers, or in repeated hospitalizations during their first three years of life. The institute must conduct a comprehensive program of research to: (1) Design and validate strategies that can be used with these infants and toddlers to promote

development during extended or repeated hospitalizations; (2) improve procedures related to the identification and referral process; and (3) investigate and improve organizational structures to ensure support of comprehensive services for infants and toddlers.

Procedures to optimize the development of infants and toddlers with handicaps that include extensive special health care needs must be carefully designed and implemented. The institute's research must include, but need not be limited to, studies to: (1) Develop exemplary decisionmaking models to determine the points in an infant's or toddler's life when nonmedical interventions can be appropriately and safely administered; (2) identify a variety of effective nonmedical interventions that are keyed to family and child needs; (3) investigate the use of methods and identify criteria to enlist and involve the services of different State and local agencies, including the State protection and advocacy agency, the State department of health, the State welfare or protective services department, and the State lead agency for the Early Intervention Program for Infants and Toddlers with Handicaps under Part H of the Act, in programming for families and their infants and toddlers with handicaps; and (4) develop new or improved interventions that will facilitate the transition of the child to the home and to community-based services.

Procedures related to the identification and referral of these infants and toddlers and their families are an essential component of a coordinated system of comprehensive care. Numerous professionals and agencies may need to be involved to support and enable families to meet the extensive health and developmental needs of their children. In addressing these issues, the institute's program of research must include, but need not be limited to, studies to: (1) Establish criteria to identify and define the population of infants and toddlers with developmental and special health care needs; (2) develop exemplary practices for referral to other services and agencies and for tracking services provided for the infant or toddler and the family; and (3) identify effective strategies for involving a team of various disciplines in planning and implementing the individualized family service plan.

Organizational structures that relate to the identification, referral, and intervention process for these infants and toddlers and their families can facilitate or hinder the delivery of comprehensive services. The structures used in NICUs, in-patient acute care facilities, or extended care facilities for infants and toddlers may be quite different from those used by community-based health, education, or service agencies. Organizational structures used in hospital programs must interface with those used in community-based programs to provide quality comprehensive care for families and their children. In investigating this area, the institute's research must include, but need not be limited to, studies to: (1) Identify the full range of medical and developmental servies and personnel needed for infants with handicaps and special health care needs while hospitalized in an NICU; (2) develop and validate model organizational structures for NICUs and follow-up clinics and programs that strengthen the role of families and facilitate coordination among medical and developmental services and between inpatient and outpatient care, including descriptions of types of personnel, their roles and responsibilities, and lines of communication; and (3) investigate options for home care for infants and toddlers with developmental and special health care needs that are outside a hospital or inpatient extended care facility and that include appropriate levels of financial and other supports necessary to meet the extensive medical, health, and developmental needs of the infant or toddler.

In addition to conducting the research described above, the institute must commit approximately 20% of its annual budget to conducting inservice training activities. These activities must be designed to assist hospital NICUs and regular staff to learn about new or improved procedures and organizational structures to serve families and their infants and toddlers with handicaps that include special health care needs. The training activities must be based on the results of the institute's research program, already published information, and existing exemplary practices.

In conducting the research program and in order to field test the procedures and organizational structures, the institute supported under this priority must work with a consortium of NICUs and their follow-up clinics and programs as well as participating hospitals that specialize in acute care for children. The consortium must vary on dimensions of quality and comprehensiveness of services, client characteristics, geographic location, intake and referral procedures, and regional coordination. Further, the institute's research program must be conducted within a conceptual framework that identifies the specific issues to be studied; the known and hypothesized problems associated with each issue; the initial intervention strategies and organizational structures that will be studied; measurement instruments and procedures that will be used in the investigations; the relationship between planned investigations and already existing knowledge, products and practices; method of disseminating the validated intervention strategies and organizational structures to service delivery providers; and the relationship of each study to the objectives of this priority.

In carrying out its research and developmental activities, the institute must provide research training and experience for at least 10 graduate students annually. Given the nature of this institute, some of the students selected for training may be graduate students in health or health-related fields who desire to gain expertise in conducting interdisciplinary research and development in hospital settings.

*Period of Award*

The Secretary will approve one cooperative agreement with a project period of 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The services of the review team are to be performed during the last half of the institute's second year, and will replace that year's annual evaluation that the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team are to be incorporated into the applicant's proposed budget. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timeliness and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient of the cooperative agreement; and

(2) The degree to which the institute's research design and methodological procedures demonstrate the potential for

producing significant new knowledge and products.

*Invitation to Comment:* Interested persons are invited to submit comments and recommendations regarding the proposed priorities.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in Room 4092 or 3094, Switzer Building, 400 Maryland Ave., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

*Date:* Comments must be received on or before December 18, 1987.

*Address:* Comments should be addressed to: Joseph Clair, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 4092—M/S 2313–3094, Washington, DC 20202).

*Contact:* Joseph Clair, Telephone (202) 732–1101.

*Program Authority:* 20 U.S.C. 1423.

*Supplementary Information and Requirements:* The Handicapped Children's Early Education Program (HCEEP) was established under Pub. L. 91–230 on April 13, 1970, and is currently authorized by section 623 of Part C of the Education of the Handicapped Act, as amended. The purpose of the program is to support a variety of activities designed to address the special problems of infants, toddlers, and children with handicaps, from birth through eight, including experimental, demonstration, and outreach projects, research and training activities, early childhood research institutes, and a technical assistance development system.

*Eligible Applicants:* Public agencies and nonprofit private organizations may apply for an award under any of the proposed priorities. In addition, profitmaking organizations may apply for an award under 84.024J.

*Matching Requirements for Demonstration, Outreach and Experimental Projects:* For priorities 84.024A, 84.024F, 84.024C, 84.024E, 84.024G, and 84.024H, 34 CFR 309.31 provides that federal financial participation may not exceed 90% of development, operation, and evaluation of the project.

*Selection Criteria:* The Secretary uses the following criteria under 34 CFR Part 309 to evaluate an application. References to the Act refer to the Education of the Handicapped Act.

(a) *Importance.* (15 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed;

(ii) The extent to which the project is based on previous research findings related to the problem or issue;

(iii) The numbers of individuals who will benefit; and

(iv) How the project will address the identified problem or issue.

(b) *Impact.* (15 points)

(1) The Secretary reviews each application to determine the probable impact of the proposed project in meeting the needs of children with handicaps, birth through age eight, and their families.

(2) The Secretary considers—

(i) The contribution that project findings or products will make to current knowledge and practice;

(ii) The methods used for dissemination of project findings or products to appropriate target audiences; and

(iii) The extent to which findings or products are replicable, if appropriate.

(c) *Technical soundness.* (35 points)

(1) The Secretary reviews each application to determine the technical soundness of the project plan;

(2) In reviewing applications under this part, the Secretary considers—

(i) The quality of the design of the project;

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(iii) The methods and procedures used to implement the design, including instrumentation and data analysis; and

(iv) The anticipated outcomes.

(3) With respect to training projects, in applying the criterion in paragraph (c)(2)(iii) of this section, the Secretary considers—

(i) The curriculum, course sequence, and practica leading to specific competencies; and

(ii) The relationship of the project to the comprehensive system of personnel development plans required by Parts B and H of the Act and State licensure or certification standards.

(4) In addition to the criteria in paragraph (c)(2) of this section, the Secretary, in reviewing outreach projects, also considers—

(i) The agencies to be served through outreach activities;

(ii) The current services, their location, and anticipated impact of outreach assistance for each of those agencies;

(iii) The model demonstration project upon which the outreach project is based, including the effectiveness of the model program with children, families, or other recipients of project services; and

(iv) The likelihood that the demonstration project will be continued and supported by funds other than those available through this part;

(d) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project;

(ii) Clarity in the goals and objectives of the project;

(iii) The quality of the activities proposed to accomplish the goals and objectives;

(iv) The adequacy of proposed timelines for accomplishing those activities; and

(v) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the goals and objectives.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating project goals, objectives, and activities.

(2) The Secretary considers the extent to which the methods of evaluation are appropriate and produce objective and quantifiable data.

(f) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the other key project personnel;

(iii) The time that each person referred to in paragraphs (f)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) The Secretary considers experience and training in areas related

to project goals to determine qualifications of key personnel.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine adequacy of resources allocated to the project.

(2) The Secretary considers the adequacy of the facilities and the equipment and supplies that the applicant plans to use.

(h) *Budget and cost-effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to undertake project activities; and

(ii) Costs are reasonable in relation to objectives of the project.

PROGRAM FOR SEVERELY HANDICAPPED (INCLUDING DEAF-BLIND) CHILDREN

[Application Notices for Fiscal Year 1988]

| Title and CFDA No. | Deadline for transmittal of applications | Deadline for intergovernmental review | Available funds | Estimated range of awards | Estimated size of awards | Estimated No. of awards | Project period in months |
|---|---|---|---|---|---|---|---|
| Nondirected Demonstration and Research Projects for Severely Handicapped (Other Than Deaf-Blind) Children and Youth (CFDA No. 84.086C). | 1-22-88 | | 815,000 | 111,000 to 121,000. | 116,000 | 7 | Up to 36. |
| Nondirected Demonstration and Research Projects for Deaf-Blind Children and Youth (CFDA No. 84.086H). | 1-22-88 | | 1,098,000 | 105,000 to 114,000. | 110,000 | 10 | Up to 36. |
| Statewide Systems Change (CFDA No. 84.086J). | 1-22-88 | | 950,000 | 232,000 to 242,000. | 237,000 | 4 | Up to 60. |
| Inservice Training—Services for Severely Handicapped Children and Youth (CFDA No. 84.086R). | 1-22-88 | | 550,000 | 105,000 to 115,000. | 110,000 | 5 | Up to 36. |
| Extended School Year Projects for Severely Handicapped Children (CFDA No. 84.086S). | 1-22-88 | | 140,000 | 65,000 to 75,000 | 70,000 | 2 | Up to 36. |

**Program for Severely Handicapped Children**

*CFDA No.:* 84.086

*Purpose:* To provide Federal financial assistance for demonstration or development, research, training, and dissemination activities for severely handicapped, including deaf-blind, children and youth.

*Applicable Regulations:* (a) The regulations for the Program for Severely Handicapped Children, 34 CFR Part 315, as amended August 24, 1987 (52 FR 31958); (b) the Education Department General Administrative Regulations, (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79; and (c) when adopted in final form, the annual funding priorities for this program. Applicants should prepare their applications based on the program regulations and the proposed priorities. If there are substantive changes made when the final annual funding priorities are published, applicants will be given the opportunity to amend or resubmit their applications.

*Proposed Priorities:* In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105 (c)(3), the Secretary proposes to give an absolute preference under the Program for Severely Handicapped Children, CFDA 84.086, in fiscal year 1988, to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet these priorities.

*Priority 1: Nondirected Demonstration and Research Projects for Severely Handicapped (Other than Deaf-Blind) Children and Youth (CFDA 84.086C)*

This priority supports projects: (1) That develop or demonstrate new, or improvements in existing, methods, approaches, or techniques that would contribute to the adjustment and education of severely handicapped (other than deaf-blind) children and youth; and (2) that conduct research to identify and meet specific educational or related needs selected from the full range of special needs of severely handicapped (other than deaf-blind) children and youth. Applicants must indicate whether applications are to be considered demonstration or research projects.

The Secretary particularly invites applications that: (a) Improve the education and related services available to individuals with the most severe impairments; (b) improve and expand social interaction skills for people with severe handicaps through training in social interaction and related skills and expansion of social contacts in regular classrooms, workplaces, or recreational activities; or (c) improve curricular and instructional procedures that enhance acquisition, generalization, and maintenance of functional skills and activities. However, in accordance with the Education Department General Administration Regulations (EDGAR) at 34 CFR 75.105(c)(1), an application submitted under this notice that meets these invitational priorities will not be given a competitive or absolute preference over other applications.

*Priority 2: Nondirected Demonstration and Research Projects for Deaf-Blind Children and Youth* (CFDA 84.086H)

This priority supports projects (1) that develop or demonstrate new, or improvements in existing, methods, approaches, or techniques that would contribute to the adjustment and education of deaf-blind children and youth; and (2) that conduct research to identify and meets specific educational or related needs selected from the full range of special needs of deaf-blind

children and youth. Applicants must indicate whether applications are to be considered demonstration or research projects.

The Secretary particularly invites applications that: (a) Improve the expressive and receptive communication of children who are deaf and blind; (b) improve the preparation for and transition to supported employment; (c) improve the abilities and opportunities for living in regular community environments; or (d) improve the social network of children with deaf-blindness through related skill training and expansion of social contacts in regular classrooms, workplaces, or recreational settings. However, in accordance with the Education Department Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(1), and application submitted under this notice that meets this invitational priority will not be given a competitive or absolute preference over other applications.

*Priority 3: State-wide Systems Change* (CFDA No. 84.086J)

This priority supports projects that: (a) Develop, in conjunction with the Part B State plan, activities to improve the quality of special education and related services in the State for severely handicapped (including deaf-blind) children and youth, birth through 21 years of age, and to change the delivery of these services from segregated to integrated environments; (b) significantly increase the number of severely handicapped children in the State who are served in regular school settings alongside their same-aged nonhandicapped peers; (c) evaluate the effectiveness of these activities, including collecting and reporting each year on the number of children with severe handicaps in the State in each type of educational setting and showing changes from previous years; and (d) disseminate information about the project's outcomes.

Applicants under this priority must describe in detail how they will accomplish the following tasks:

(1) Identify resources available in the State to provide the needed services to children and youth who are severely handicapped;

(2) Improve the State's Part B and Part H child-find activities pertaining to all children and youth with severe handicaps within the State;

(3) Establish services needed to assist these children and youth to achieve their most realistic functioning level in normalized, nonsegregated least restrictive environments. These services must at a minimum:

(i) Develop new approaches for delivery of integrated educational services, that include providing severely handicapped children who are currently being served in segregated environments with special educational and related services in programs at facilities with nonhandicapped children;

(ii) Demonstrate through the provision of project services the clear movement of participating children and youth to and integration into less segregated environments, with the objective of facilitating the placement of these children in appropriate regular school settings;

(iii) Demonstrate the delivery of curricula relevant to education in integrated settings including the teaching of social integration skills, community reference skills, and employment skills;

(iv) Promote acceptance of severely handicapped children and youth by the general public through increasing both the quality and frequency of meaningful interactions of these children and youth with handicapped and nonhandicapped peers and adults; and

(v) Describe how the unique needs of deaf-blind children and youth will be addressed by project activities;

(vi) Demonstrate the effectiveness of extended school year activities in promoting the development and maintenance of skills for severely handicapped children and youth; and

(vii) Demonstrate effective involvement of families in the planning and delivery of services to their severely handicapped children and youth;

(4) Establish a project advisory board having representation of parents of project children and youth, providers of services to this population, and State and professional organizations, that is responsible for providing significant input on project management procedures; and

(5) Formulate and implement formal, written policies and procedures with relevant State, local and professional organizations for coordinating services provided to the target population, including the elimination of overlapping and redundant services.

Applications responding to this priority will be evaluated under the selection criteria for demonstration and training projects.

*Priority 4: Inservice Training—Services for Severely Handicapped Children and Youth* (CFDA No. 84.086R)

This priority supports projects that utilize effective inservice training activities that meet the needs of qualified personnel to provide educational and related services to severely handicapped, including deaf-blind, children and youth. Personnel receiving inservice training under this priority must be either:

(1) Currently providing educational services to these severely handicapped, including deaf-blind, children and youth; or

(2) Committed by signed contract or other agreement to provide children and youth for at least a one-year period following the completion of the inservice training provided under this priority.

The inservice training provided must be based on innovative practices for the education of these children and youth in least restrictive environments. These practices could include, for example, training sequences for development of job-related skills determined to be critical for retention of students in supported work placements; use of augmentative communication devices for deaf-blind children placed in least restrictive environments; parental involvement in monitoring the progress of their severely handicapped children; and application of research project findings with severely handicapped children in normalized least restrictive environments.

Applicants under this priority must have an on-going model of innovative, effective educational approaches for severely handicapped (including deaf-blind) children or youth at which persons receiving inservice training under this priority will be provided practicum training experiences.

Training may be made available for professionals and paraprofessionals in educational, vocational, health, social services, and other related service fields. All inservice training projects must be planned in consideration of the comprehensive system of personnel development required under Part B and Part H of the EHA (See 34 CFR 300.139) and demonstrate ongoing coordination and cooperation between universities and State agencies. Projects could provide for release time of participants, options for academic credit, salary step credit, certification renewal, or updating professional skills.

The Secretary may authorize the payment of stipends, on a case-by-case basis, for inservice training in an amount the Secretary determines appropriate for a particular training activity.

*Priority 5: Extended School Year Program for Severely Handicapped Children* (CFDA 84.086S)

This priority supports demonstration projects that design, implement, and disseminate information about innovative practices that provide

extended school year activities for severely handicapped children who may also have visual and hearing handicaps. The extended school-year programs are those that provide services during the interim between two regular school years, if the interim period is at least four weeks in length. Activities provided by these projects may include any of the services under 34 CFR 307.11(a)(1).

These projects must focus on maintaining and enhancing skill development and training of these children in integrated, least restrictive environments that promote social and communicative interaction.

*Invitation to Comment:* Interested persons are invited to submit comments and recommendations regarding the proposed priorities to the contact person named in this notice.

All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period, in Room 4092, Switzer Building, 330 C Street, SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

*Date:* Comments must be received on or before December 18, 1987.

*Address:* Comments should be addressed to: Sara Conlon, Severely Handicapped Branch, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511 M/S 3409), Washington, DC 20202.

*Contact:* Sara Conlon, Telephone (202) 732-1177, or Joseph Clair, Telephone (202) 732-1101.

*Program Authority:* 20 U.S.C. 1424.

*Supplementary Information and Requirements:*

*Eligible Applicants:* Public or private, nonprofit or profit, organizations or institutions may apply for an award under these competitions.

*Selection Criteria for Research Projects:* The Secretary uses the following criteria under 34 CFR 315.32 to evaluate an application for a research project:

(a) *Importance and expected impact of the research.* (20 points) The Secretary reviews each application to determine the extent to which the project will develop new knowledge in understanding and effectively meeting the needs of severely handicapped children and youth, including the extent to which—

(1) The programmatic research areas proposed by the applicant represent critical areas of investigation, or problems whose solution would have greatest impact on improving services to severely handicapped children and youth; and

(2) The specific questions to be addressed in the project are likely to generate knowledge needed for bringing about a major change in understanding of the topical area.

(b) *Technical soundness of the project.* (15 points)

(1) The Secretary reviews each application to determine the technical soundness of the research plan, including—

(i) The design;

(ii) The proposed sample;

(iii) Instrumentation; and

(iv) Data analysis procedures.

(2) The Secretary also reviews each application for the relevance of its proposed training efforts, including—

(i) Strategies for provision of training; and

(ii) Relationships between the applicant, other organizations or agencies providing training in coordination with the applicant, and trainees receiving training from the applicant.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(2) How the objectives of the project relate to the purpose of the program;

(3) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(4) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, and handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in conducting, documenting, and applying research pertaining to severely handicapped children and youth;

(ii) Awareness of relevant research findings and demonstration project results pertaining to other handicapped children and youth and the potential for use of the findings and results with severely handicapped children and youth; and

(iii) Experience in communicating research findings to service providers of severely handicapped children and youth and in assisting these providers with effective application of the findings.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Provides a clear description of the content, intended audiences, and timelines for production of all project documents and other products that the applicant will disseminate.

*Selection Criteria for Demonstration and Training Projects:* The Secretary uses the following criteria under 34 CFR 315.33 to evaluate an application for a

demonstration project and a training project. The Secretary also uses these criteria to evaluate a dissemination project, except that a maximum of 30 points may be given for criterion (b) (plan of operation) and no points are provided for criterion (g) (dissemination plan).

(a) *Extent of need and expected impact of the project.* (25 points) The Secretary reviews each application to determine the extent to which the project is consistent with national needs in the provision of innovative services to severely handicapped children and youth, including consideration of—

(1) The needs addressed by the project;

(2) The impact and benefits to be gained by meeting the educational and related service needs of severely handicapped children and youth served by the project, their parents and service providers; and

(3) The national significance of the project in terms of potential benefits to severely handicapped children and youth who are not directly involved in the project.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate and selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its non-discriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timeliness for production of all project documents and other products which the applicant will disseminate.

## SERVICES FOR DEAF-BLIND CHILDREN AND YOUTH

[Application Notices for Fiscal Year 1988]

| Title and CFDA No. | Deadline for transmittal of applications | Deadline for intergovernmental review | Available funds [1] | Estimated range of awards [1] | Estimated size of awards [1] | Estimated number of awards | Project period in months |
|---|---|---|---|---|---|---|---|
| State amd Multi-State Projects for Deaf-Blind Children and Youth (CFDA No. 84.025A). | 2-19-88 | 4-19-88 | 400,000 | 90,000 to 110,000.... | 100,000 | 4 | Up to 36. |
| Technical Assistance to State and Multi-State Projects for Deaf-Blind Children and Youth (CFDA No. 84.025C). | 2-19-88 | 4-19-88 | 940,000 | 940,000 ..... | 940,000 | 1 | Up to 36. |

[1] These are estimates. The actual amount available for awards and the size of awards cannot be determined pending final action by the Congress.

*Title of Program:* Services for Deaf-Blind Children and Youth.

*CFDA No.:* 84.025.

*Purpose:* To provide Federal financial assistance for State and Multi-State projects to make available services to deaf-blind children and youth and to provide technical assistance for this population.

*Applicable Regulations:* (a) The regulations for the Services for Deaf-Blind Children and Youth Program, 34 CFR Part 307, (b) the Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79; and (c) when adopted in final form, the annual funding priorities, CFDA 84.025C. Applicants

should prepare their applications based on the program regulations and the proposed priorities. If there are substantive changes made when the final annual funding priorities are published, applicants will be given the opportunity to amend or resubmit their applications.

*Priority 1: State and Multi-State Projects for Deaf-Blind Children and Youth* (CFDA No. 84.025A)

In accordance with 34 CFR 75.105(c)(3), the Secretary announces an absolute preference for fiscal year 1988 State and multi-State projects authorized under 34 CFR 307.11 for deaf-blind children and youth. Any State is permitted under the regulations (See §§ 307.11(e) and 307.20(a)(1)) to choose to receive services independently from other States. This priority provides the opportunity for a State presently participating in a multi-State project for deaf-blind children and youth to withdraw from that project and apply for a single State project.

*Proposed Priority:* In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference under the Services for Deaf-Blind Children and Youth Program in fiscal year 1988 to applications that respond to the following priority; that is, the Secretary proposes to select for funding only those applications proposing projects that meet this priority.

*Priority 2: Technical Assistance to State and Multi-State Projects for Deaf-Blind Children and Youth* (CFDA 84.025C)

This priority supports one project that on a national basis provides technical assistance to grantees under 34 CFR 307.11 (State and Multi-State Projects for Deaf-Blind Children and Youth) in the provision of services to deaf-blind children and youth ages birth through 21 years. Applicants must describe how they will meet the requirements specified in 34 CFR 307.12 of the program regulations and demonstrate the capability to serve the heterogenous population of deaf-blind children and youth, including those children who have high as well as low functional levels.

Technical assistance services are to be focused on the improvement of services to children and youth with deaf-blindness in their current placement but promote the movement of those children in restrictive settings to an integrated, less restrictive environment.

The applicant must describe how the project will develop, implement, and evaluate a technical assistance plan with each 34 CFR 307.11 grantee and the State educational agency of the State in which the technical assistance is provided. In addition, the applicant must describe how the project will provide technical assistance to the 34 CFR 307.11 grantees in their preparation and submission of data required under 34 CFR 307.40, including a reconciliation of that data with the child count provided by the State under Part B of the Education of the Handicapped Act and Chapter I of the Education Consolidation and Improvement Act.

*Invitation to Comment:* Interested persons are invited to submit comments and recommendations regarding the proposed priorities to the contact person named in this notice.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 4092, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday except Federal holidays.

*Date:* Comments must be received on or before December 18, 1987.

*Contact Person:* For priority CFDA No. 84.025A, contact Charles Freeman; and for proposed priority CFDA No. 84.025C, contact Helene Corradino, Severely Handicapped Branch, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3511–M/S 3409), Washington, DC 20202. (202) 732–1177.

*Program Authority:* 20 U.S.C. 1422.

*Supplementary Information and Requirements: Eligible Applicants:* Public or nonprofit private agencies, institutions, or organizations may apply for an award under these competitions.

*Selection Criteria:* The Secretary uses the following criteria under 34 CFR Part 307 to evaluate an application for new awards. References to the Act refer to the Education of the Handicapped Act.

(a) *Plan of operation.* (40 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualification of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (*See*) 34 CFR 75.590. *Evaluation by the Grantee*)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the

project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Capability of applicant agency.* (10 points)

The Secretary reviews each application for information that shows the capability of the applicant public or nonprofit agencies, organization, or institutions in conducting activities which have significant relevance to the proposed project.

(g) *Dissemination plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the dissemination plan for the project.

(2) The Secretary looks for information that shows—

(i) An effective plan to disseminate project information within the State in which the project is located and to make available to the relevant grantee under § 307.15 significant project information for appropriate dissemination of such information throughout the Nation; and

(ii) A clear description of the content, intended audiences, and timelines for production of all documents and other products proposed for development by the project.

(h) *Cooperation and coordination with other organizations and institutions.* (10 points)

(1) The Secretary reviews each application for information that ensures that activities funded under this section will be coordinated with—

(i) Similar activities funded from grants, contract, and cooperative agreements awarded under Parts C, D, and E of the Act.

(ii) Other agencies, organizations, and institutions conducting or eligible to conduct activities essential to the effective implementation of the application being considered; and

(iii) The dissemination of materials and information concerning the education of deaf-blind children and youth required under the clearinghouses authorized under section 633 of Part D of the Act.

(2) The Secretary looks for information that shows the nature, extent, and timeliness of coordinated interaction which the applicant has had and proposed to have to facilitate implementation of project activities and continuation of these activities after termination of Federal funding.

## EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING

[Application Notices for Fiscal Year 1988]

| Title and CFDA No. | Deadline for transmittal of applications | Deadline for intergovernmental review | Available funds[1] | Estimated range of awards[1] | Estimated size of awards[1] | Estimated number of awards | Project period in months |
|---|---|---|---|---|---|---|---|
| Closed-Captioned Sports Program (CFDA No. 84.026A). | 2-19-88 | 4-19-88 | 500,000 | 500,000 | 500,000 | 1 | Up to 36. |
| Closed-Captioned Local and Regional News (CFDA No. 84.026L). | 2-19-88 | 4-19-88 | 500,000 | 500,000 | 50,000 | 10 | Up to 36. |

[1] These are estimates. The actual amount available for awards and the size of awards cannot be determined pending final action by the Congress.

*Title of Program:* Educational Media Research, Production, Distribution, and Training.

CFDA No.: 84.026.

*Purpose:* To provide Federal financial assistance for: (a) Conducting research in the use of educational media and technology for persons with handicaps; (b) producing and distributing educational media for the use of persons with handicaps, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of persons with handicaps; and (c) training persons in the use of educational media for the instruction of persons with handicaps. Awards under this program are authorized under Part F of the Education of the Handicapped Act, as amended.

*Applicable Regulations:* (a) The regulations for the Educational Media Research, Production, Distribution, and Training Program, 34 CFR Part 332; (b) the Education Department General Administrative Regulations (EDGAR), 34 CFR 74, 75, 77, 78, and 79; and (c) when adopted in final form, the annual funding priorities for this program. Applicants should prepare their applications based on the regulations and the proposed priorities. If there are any substantative changes made when the final annual funding priorities are published, applicants will be given the opportunity to amend or resubmit their applications.

*Proposed Priorities:* In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference under the Educational Media Research, Production, Distribution, and Training program, CFDA No. 84.026, for fiscal year 1988 to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet these priorities.

*Priority 1: Closed-Captioned Sports Program* (CFDA No. 84.026A)

This priority supports one cooperative agreement for the closed-captioning of sports programs to permit full access to remarks made by sports commentators. Currently, access to the commentary and other pertinent information is not available. This project will offer persons with hearing impairments enriched educational and cultural experiences in which sports play a large part.

*Priority 2: Closed-Captioned Local and Regional News* (CFDA No. 84.026L)

This priority supports new projects for the closed-captioning of local television news programs. Projects would be incrementally funded to encourage closed-captioning of local news. At the end of the third year applicants are expected to continue the project without additional Federal support.

*Invitation to Comment:* Interested persons are invited to submit comments and recommendations regarding the proposed priorities to the contact person named in this notice.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in Room 4092, Switzer Building, 330 C Street SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

*Date:* Comments must be received on or before December 18, 1987.

*Contact Person:* Malcolm Norwood, Division of Educational Services, Office of Special Education Programs, 400 Maryland Avenue SW. (Switzer Building, Room 4088–M/S 2313 3094), Washington, DC 20202. Telephone: (202) 732–1177.

*Program Authority:* 20 U.S.C. 1451, 1452.

*Supplementary Information and Requirements: Eligible applicants:* Parties eligible for grants are profit and nonprofit public and private agencies, organizations, and institutions.

*Selection Criteria:* The Secretary uses the following criteria under 34 CFR Part 332 to evaluate an application under these priorities:

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally under represented, such as—

(A) Handicapped persons;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under represented, such as—

(A) Handicapped persons;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (15 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (*See* 34 CFR 75.590-Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources for the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows the need for the project.

(2) The Secretary looks for information that shows—

(i) The need for the proposed activity with respect to the handicapping condition served or to be served by the applicant;

(ii) The potential for using the results in other projects or programs.

(g) *Marketing and dissemination.* (5 points)

(1) The Secretary reviews each application for information that shows adequate provisions for marketing or disseminating results.

(2) The Secretary looks for information that shows—

(i) The provisions for marketing or otherwise disseminating the results of the project; and

(ii) Provisions for making materials and techniques available to the populations for whom the project would be useful.

**Section III—Instructions for Transmittal of Applications**

Applicants are advised to reproduce and complete the application forms in section V. Applicants are required to submit an original and two copies of each application as provided in this Section.

*Application Delivered by Mail:* An application sent by mail must be addressed to the U.S. Department of Education, 400 Maryland Avenue, SW., Application Control Center, Attention: [Appropriate CFDA No. 1], Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education. If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private meter postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

*Applications Delivered by Hand:* An application that is hand-delivered must be taken to the U.S. Department of

Education, Application Control Center, Room 3633, Regional Office Building #3, 7th & D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions. In general these questions and answers are applicable to all direct grant competitions covered by this combined application package.

*Q.* Can we get an extension of the deadline?

*A.* No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to *all* applications. Waivers for individual applications *cannot* be granted, regardless of the circumstances.

*Q.* How many copies of the application should I submit and must they be bound?

*A.* Current Government-wide policy is that only an original and two copies need be submitted. The binding of applications is optional. At least one copy should be left unbound to facilitate any necessary reproduction. Applicants should not use foldouts, photographs, or other materials that are hard-to-duplicate.

*Q.* We just missed the deadline for the XXX competition. May we submit under another competition?

*A.* Yes, but it may not be worth the postage. A properly prepared application should meet the specifications of the competition to which it is submitted.

*Q.* I'm not sure which competition is most appropriate. What should I do?

*A.* We are happy to discuss the questions with you and provide clarification on the unique elements of the various competitions.

*Q.* Will you help us prepare our application?

*A.* We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor does it guarantee the success of an application.

*Q.* When will I find out if I'm going to be funded?

*A.* You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

*Q.* Once my application has been reviewed by the Review panel, can you tell me the outcome?

*A.* No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with *anyone.*

*Q.* How long should an application be?

*A.* The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. The scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. It is helpful to include in the appendices such information as:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information relevant to the proposed project. Qualifications of consultants and advisory council members should be provided and be similarly brief.

(2) Assurance of participation of an agency other than the applicant if such participation is critical to the project, including copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

*Q.* How can I be sure that my application is assigned to the correct competition?

*A.* Applicants should clearly indicate in Block 6a, 6b, and 7 of the face page of their application (Standard form 424) the CFDA number of the program priority (e.g., 84.023X) representing the competition in which the application should be considered. If this information is not provided, your application may inadvertently be assigned and reviewed under a different competition from the one you intended.

*Q.* Will my application be returned if I am not funded?

*A.* We no longer return original copies of unsuccessful applications. Thus, applicants should retain at least one copy of the application. Copies of reviewer comments will be mailed to applicants who are not successful.

*Q.* How should my application be organized?

*A.* The application narrative should be organized to follow the exact sequence of the components in the selection criteria of the regulations pertaining to the specific program competition for which the application is prepared. In each instance, a table of contents and a one-page abstract summarizing the objectives, activities, project participants, and expected outcomes of the proposed project should precede the application narrative.

*Q.* Is travel allowed under these projects?

*A.* Travel associated with carrying out the project is allowed (i.e. travel for data collection, etc.). Because we may request the principal investigator or director of funded projects to attend an annual meeting, you may also wish to include a trip to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

*Q.* If my application receives a high score from the reviewer does that mean that I will receive funding?

*A.* No. It is often the case that the number of applications scored highly by or approved by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of the applications and other relevant factors, determines the applications that can be funded.

*Q.* What happens during negotiations?

*A.* During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff review and require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if

proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

*Q.* If my application is successful can I assume I will get the estimated/projected budget amounts in subsequent years?

*A.* No. The estimate for subsequent year project costs is helpful to us for planning purposes but it in no way represents a commitment for a particular level of funding in subseqent years. Grantees having a multi-year project will be asked to submit a continuation application and a detailed budget request prior to each year of the project.

*Q.* What is a cooperative agreement and how does it differ from a grant?

*A.* A cooperative agreement is similar to a grant in that its principal purpose is to provide assistance for a public purpose of support or stimulation as authorized by a Federal statute. A cooperative agreement differs from a grant because of the substantial involvement anticipated between the executive agency (in this case the Department of Education) and the recipient during the performance of the contemplated activity.

*Q.* Is the procedure for applying for a cooperative agreement different from the procedure for applying for a grant?

*A.* No. If the Department of Education determines that a given award should be made by cooperative agreement rather than a grant, the applicant will be advised at the time of negotiation of any special procedures that must be followed.

*Q.* How do I provide an assurance?

*A.* Simply state in writing that you are meeting a prescribed requirement.

*Q.* Where can copies of the Federal Register, program regulations, and Federal statutes be obtained?

*A.* Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238.

**Section IV—Intergovernmental Review of Federal Programs**

The regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs", are in 34 CFR Part 79.

Applicability of the Executive Order to an individual program is indicated in the program listing in Section II, by a deadline date for transmitting comments under the column "Deadline for Intergovernmental Review". If the Order is not applicable to a particular program, that fact is indicated by the symbol "N/A".

The objective of Executive Order 12372 is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the Single Point of Contact for each State and follow the procedures established in those States under the Executive Order. A list containing the Single Point of Contact for each State is included in the application package for these programs.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date in the program announcement for Intergovernmental Review to the following address: The Secretary, E.O. 12372—CFDA# 84. _____, U.S. Department of Education, M.S. 6401, 400 Maryland Avenue, SW., Washington, DC 20202.

On line 1 of the above address, please provide the correct catalog of Federal Domestic Assistance number (CFDA#) of the program for which a comment of State process recommendation on an application is submitted.

In those States that require review for this program, applications are to be submitted simultaneously to the State Review Process and the U.S. Department of Education.

Proof of mailing will be determined on the same basis as applications.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATIONS. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

**State Single Points of Contact**

August, 1987.

*Alabama*

Mrs. Donna J. Snowden, State Single Point of Contact, Alabama State Clearinghouse, Department of Economic & Community Affairs, P.O. Box 2939, 3465 Norman Bridge Road, Montgomery, Alabama 36105–0939, Telephone (205) 284–8905

*Arizona*

Ms. Janice Dunn, Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Telephone (602) 255–5504

*Arkansas*

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

*California*

State Single Point of Contact, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

*Colorado*

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

*Connecticut*

Gary E. King, Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410

*Delaware*

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–4204

*District of Columbia*

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC. 20004, Telephone (202) 727–9111

*Florida*

George Meier, State Single Point of Contact, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Telephone (904) 488-8114

*Georgia*

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656-3855

*Hawaii*

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548-3016 or 548-3085

*Illinois*

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782-8639

*Indiana*

Peggy Boehm, Deputy Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232-5610

*Iowa*

A. Thomas Wallace, Iowa Department of Economic Development, Division of Community Progress, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281-3864

*Kansas*

Martin Kennedy, Intergovernmental Liaison, Department of Administration, Division of the Budget, Room 152-E, State Capitol Building, Topeka, Kansas 66612, Telephone (913) 296-2436

*Kentucky*

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564-2382

*Louisiana*

Colby S. LaPlace, Assistant Secretary, Department of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, Louisiana 70804, Telephone (504) 342-9790

*Maine*

State Single Point of Contact, Attn: Hal Kimbal, State Planning Office, State House Station 38, Augusta, Maine 04333, Telephone (207) 289-3154

*Maryland*

Guy W. Hager, Director, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Telephone (301) 225-4490

*Massachusetts*

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 904, Boston, Massachusetts 02202, Telephone (617) 727-3253

*Michigan*

Michelyn Pasteur, Deputy Director, Local Development Services, Department of Commerce, Federal Project Review System, 6500 Mercantile Way, Suite 2, Lansing, Michigan 48910, Telephone (517) 373-6190

Please direct correspondence to: Deputy Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48910

*Minnesota*

Maurice D. Chandler, State Single Point of Contact, Intergovernmental Review, Minnesota State Planning Agency, Room 101, Capitol Square Building, St. Paul, Minnesota 55101, Telephone (612) 296-2571

*Mississippi*

Mr. Marlan Baucum, Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Building, 500 High Street, Jackson, Mississippi 39202, Telephone (601) 359-3150

*Missouri*

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 760 Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834

*Montana*

Sue Health, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Lieutenant Governor, Capitol Station, Helena, Montana 59620, Telephone (406) 444-5522

*Nevada*

Jean Ford, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 885-4420

Please direct correspondence and questions to: John Walker, Clearinghouse Coordinator

*New Hampshire*

David G. Scott, Acting Director, New Hampshire Office of State Planning, 2 1/2 Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155

*New Jersey*

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services—CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-9025

*New Mexico*

Dean Olson, Director, Management & Program Analysis Division, Department of Finance & Administration, Room 424, State Capitol Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3885

*New York*

Harold W. Juhre, Jr., Director of the Budget, New York State, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605

Please direct correspondence and questions to: New York State Clearinghouse

*North Carolina*

Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-4131

*North Dakota*

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224-2094

*Ohio*

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0699

For Information Contact: Leonard E. Roberts, Deputy Director

*Oklahoma*

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843–9770

*Oregon*

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, N.E., Salem, Oregon 97310, Telephone (503) 373–1998

*Pennsylvania*

Laine A. Heltebridle, Special Assistance, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783–3700

*Rhode Island*

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Michael T. Marfeo, Review Coordinator

*South Carolina*

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0435

*South Dakota*

Sue Korte, State Clearinghouse Coordinator, State Government Operations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Telephone (605) 773–3661

*Tennessee*

Charles Brown, State Single Point of Contact, Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Telephone (615) 741–1676

*Texas*

Thomas C. Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

*Utah*

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 533–5245

*Vermont*

Edmund R. Morrison, Business Manager, Department of General Services, State of Vermont, State Administration Building, Montpelier, Vermont 05602, Telephone (802) 828–2211

*Virginia*

Nancy Miller, Intergovernmental Affairs Review Officer, Department of Housing & Community, Development, 205 North 4th Street, Richmond, Virginia 23219, Telephone (804) 786–4474

*Washington*

Dori Goodrich, Coordinator, Department of Community Development, Attn: Intergovernmental Review Process, Ninth and Columbia Building, Olympia, Washington 98504–4151, Telephone (206) 586–1240

*West Virginia*

Fred Cutlip, Director, Community Development Division, Governor's Office of Community & Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

*Wisconsin*

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Telephone (608) 266–1741

Please direct correspondence and questions to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration

*Wyoming*

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

**Territories**

*Guam*

State Single Point of Contact, Guam State Clearinghouse, Office of the Lieutenant Governor, P.O. Box 2950, Agana, Guam 96910

*Northern Mariana Islands*

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

*Puerto Rico*

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

*Virgin Islands*

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774–0750

**Section V. Application Instructions and Forms**

This application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized.

The parts are as follows:

*Part I:* Federal Assistance Face Sheet (Form SF 424) and instructions

*Part II:* Budget Information

*Part III:* Application Narrative.

No grants may be awarded unless a completed application form has been received. (20 U.S.C. 1021, 1041; 34 CFR Part 778)

Submit the original and two copies to:

Mailing Address: U.S. Department of Education, Application Control Center, Attention: (CFDA #——), 400 Maryland Ave., SW., Washington, DC 20202.

Hand delivery: U.S. Department of Education, Application Control Center, Attention: (CFDA #——), Room 3633, Regional Office Building #3, 7th & D Streets, SW., Washington, DC 20202.

**Competitions Included in This Combined Application Package**

**Note:** The applicant must indicate in Item 6a. of this application form for federal assistance (Standard Form 424), the CFDA number and alpha of the competition to which the application is being submitted. The competition title should be indicated in Item 6b. of the form. (Abbreviate if necessary.)

| CFDA | Program/competition title |
|---|---|
| | Handicapped Childrens' Early Education Program |
| 84.024A | Demonstration Projects for Integrated Preschool Services. |
| 84.024F | Demonstration Projects for Methodology for Serving Infants and Toddlers with Specific Disabilities. |
| 84.024C | National Outreach Projects. |
| 84.024E | State-wide Outreach Projects. |
| 84.024G | Nondirected Experimental Projects. |
| 84.024H | Experimental Projects on Compensatory Strategies. |
| 84.024J | Approaches for Instructing and Maintaining Students with Handicaps in General Education Classrooms. |
| 84.024U | Early Childhood Research Institute—Transitions. |
| 84.024S | Early Childhood Research Institute—Intervention. |
| | Program for Severely Handicapped Children |
| 84.086C | Nondirected Demonstration and Research Projects for Severely Handicapped (Other than Deaf-Blind) Children and Youth. |
| 84.086H | Nondirected Demonstration and Research Projects for Deaf-Blind Children and Youth. |
| 84.086J | Statewide Systems Change. |
| 84.086R | Inservice Training—Services for Severely Handicapped Children and Youth. |
| 84.086S | Extended School Year Projects for Severely Handicapped Children. |
| | Services for Deaf-Blind Children and Youth |
| 84.025A | State and Multi-State Projects for Deaf-Blind Children and Youth. |
| 84.025C | Technical Assistance to State and Multi-State Projects for Deaf-Blind Children and Youth. |
| | Educational Media Research, Production, Distribution, and Training |
| 84.026A | Closed-Captioned Sports Program. |
| 84.026L | Closed-Captioned Local and Regional News. |

BILLING CODE 4000-01-M

OMB Approval No. 0348-0006

# FEDERAL ASSISTANCE

| | | | |
|---|---|---|---|
| 1. TYPE OF SUBMISSION (Mark appropriate box) | ☐ NOTICE OF INTENT (OPTIONAL) ☐ PREAPPLICATION ☐ APPLICATION | 2. APPLICANT'S APPLICATION IDENTIFIER | a. NUMBER<br>b. DATE Year month day 19 |
| | | 3. STATE APPLICATION IDENTIFIER NOTE: TO BE ASSIGNED BY STATE | a. NUMBER<br>b. DATE ASSIGNED Year month day 19 |
| | | Leave Blank | |

## SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name .
b. Organization Unit .
c. Street/P.O. Box .
d. City . e. County
f. State . g. ZIP Code.
h. Contact Person (Name & Telephone No.) .

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA) a. NUMBER ☐☐.☐☐☐ MULTIPLE ☐ b. TITLE

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

| | |
|---|---|
| a. FEDERAL | $ .00 |
| b. APPLICANT | .00 |
| c. STATE | .00 |
| d. LOCAL | .00 |
| e. OTHER | .00 |
| f. Total | $ .00 |

13. CONGRESSIONAL DISTRICTS OF:
a. APPLICANT
b. PROJECT

15. PROJECT START DATE Year month day 19

16. PROJECT DURATION Months

18. DATE DUE TO FEDERAL AGENCY ► Year month day 19

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter ☐

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify):
Enter appropriate letter(s) ☐☐☐

19. FEDERAL AGENCY TO RECEIVE REQUEST
a. ORGANIZATIONAL UNIT (IF APPROPRIATE)
b. ADMINISTRATIVE CONTACT (IF KNOWN)
c. ADDRESS

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

## SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE
b. SIGNATURE

## SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED Year month day 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
☐ e. DEFERRED
☐ f. WITHDRAWN

28. FUNDING

| | |
|---|---|
| a. FEDERAL | $ .00 |
| b. APPLICANT | .00 |
| c. STATE | .00 |
| d. LOCAL | .00 |
| e. OTHER | .00 |
| f. TOTAL | $ .00 |

29. ACTION DATE► Year month day 19

30. STARTING DATE Year month date 19

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32. ENDING DATE Year month date 19

33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

## GENERAL INSTRUCTIONS FOR THE SF-424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted in accordance with OMB Circular A-102. It will be used by Federal agencies to obtain applicant certification that states which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process have been given an opportunity to review the applicant's submission.

## APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I with the exception of Box 3, "State Application Identifier." If an item is not applicable, write "NA." If additional space is needed, insert an asterisk "*," and use Section IV. An explanation follows for each item:

*Item*

1. Mark appropriate box. Preapplication and application are described in OMB Circular A-102 and Federal agency program instructions. Use of this form as a Notice of Intent is at State option. Federal agencies do not require Notices of Intent.

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared (at applicant's option).

3a. Number assigned by State.

3b. Date assigned by State.

4a-4h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.

5. Employer Identification Number (EIN) of applicant as assigned by the Internal Revenue Service.

6a. Use Catalog of Federal Domestic Assistance (CFDA) number assigned to program under which assistance is requested. If more than one program (e.g., joint funding), check "multiple" and explain in Section IV. If unknown, cite Public Law or U.S. Code.

6b. Program title from CFDA. Abbreviate if necessary.

7. Use Section IV to provide a summary description of the project. If appropriate, i.e., if project affects particular sites as, for example, construction or real property projects, attach a map showing the project location.

8. "City" includes town, township or other municipality.

9. List only largest unit or units affected, such as State, county, or city.

10. Estimated number of persons directly benefiting from project.

11. Check the type(s) of assistance requested.

A. Basic Grant—an original request for Federal funds.

B. Supplemental Grant—a request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share).

E. Other. Explain in Section IV.

12. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included. If the action is a change in dollar amount of an existing grant

*Item*

(a revision or augmentation under item 14), indicate only the amount of the change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding, use totals and show program breakouts in Section IV. 12a—amount requested from Federal Government. 12b—amount applicant will contribute. 12c—amount from State, if applicant is not a State. 12d—amount from local government, if applicant is not a local government. 12e—amount from any other sources, explain in Section IV.

13b. The district(s) where most of action work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide."

14. A. New. A submittal for project not previously funded.

B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year.

C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease).

D. Continuation. An extension for an additional funding/budget period for a project with a projected completion date.

E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.

15. Approximate date project expected to begin (usually associated with estimated date of availability of funding).

16. Estimated number of months to complete project after Federal funds are available.

17. Complete only for revisions (item 14c), or augmentations (item 14e).

18. Date preapplication/application must be submitted to Federal agency in order to be eligible for funding consideration.

19. Name and address of the Federal agency to which this request is addressed. Indicate as clearly as possible the name of the office to which the application will be delivered.

20. Existing Federal grant identification number if this is not a new request and directly relates to a previous Federal action. Otherwise, write "NA."

21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

## APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete either item 22a or 22b *and* items 23a and 23b.

22a. Complete if application is subject to Executive Order 12372 (State review and comment).

22b. Check if application is not subject to E.O. 12372.

23a. Name and title of authorized representative of legal applicant.

## FEDERAL AGENCY PROCEDURES FOR SECTION III

Applicant completes only Sections I and II. Section III is completed by Federal agencies.

26. Use to identify award actions.

27. Use Section IV to amplify where appropriate.

28. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation under item 14), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding, use totals and show program breakouts in Section IV. 28a—amount awarded by Federal Government. 28b—amount applicant will contribute. 28c—amount from State, if applicant is not a State. 28d—amount from local government, if applicant is not a local government. 28e—amount from any other sources, explain in Section IV.

29. Date action was taken on this request.

30. Date funds will become available.

31. Name and telephone number of agency person who can provide more information regarding this assistance.

32. Date after which funds will no longer be available for obligation.

33. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks.

BILLING CODE 4000-01-C



☆ GPO : 1984 O - 461-275 (277)

**Part II—Instructions**

*Section A—Detailed Budget*

1. *Salaries and Wages:* Show salary and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in line 6.

2. *Fringe Benefits:* Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of the indirect cost rate.

3. *Travel:* Indicate the amount requested for travel of employees.

4. *Equipment:* Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $500 or more per unit.

5. *Supplies:* Include the cost of consumable supplies and materials to be used in the project. These should be items which cost less than $500 per unit with a useful life of less than two years.

6. *Contractual Services:* Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (2) sub-grants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

7. *Other:* Indicate all direct costs not clearly covered by lines 1–6 above.

8. *Total Direct Costs:* Show totals for lines 1–7.

9. *Total Indirect Costs:* Indicate the amount of indirect costs to be charged to the program or project. Explain under budget narrative the indirect cost rate and base.

10. *Total Project Costs:* Total lines 8 and 9.

*Section B—Cost Sharing*

1. *Project Income:* Enter the dollar amount of estimated project income that will be generated by Federal funds if authorized by the Department of Education.

2. *Non-Federal Funds:* Enter the dollar amount of funds to be provided from other sources, e.g. state, local governments, private organizations, etc.

3. *In-Kind Contributions:* Enter the dollar value of donated services and goods to be used to support the program or project.

*Section C—Estimate of Funding Needs*

1. Enter the amount of Federal funds needed for the second year of the program or project.

2. Enter the amount of Federal funds needed to complete a multi-year program or project in its third year.

3. Enter the amount of Federal funds needed to complete a multi-year program or project in its fourth year.

*Section D—Estimated Unobligated Funds*

1. *Unobligated Federal Funds:* Indicate the amount of funds remaining from the preceding fiscal year if the applicant is applying for continuation. Otherwise mark the space NA.

2. *Unobligated Non-Federal Funds:* Indicate the amount of funds remaining from the preceding fiscal year that are from non-federal sources. Otherwise mark the space NA.

3. *Total:* Show total for lines 1 and 2.

*Section E—Budget Narrative*

Attach a budget narrative that explains the amount for individual direct cost categories including the indirect cost rate and base.

PART II—BUDGET INFORMATION

[FY ____]

**Section A—Detailed Budget by Categories**

| | |
|---|---|
| 1. Salary and Wages | $..... |
| 2. Fringe Benefits | |
| 3. Travel | |
| 4. Equipment | |
| 5. Supplies | |
| 6. Contractual Services | |
| 7. Other (itemize) | |
| 8. Total Direct Costs (lines 1 to 7 totaled) | |
| 9. Total Indirect Costs | |
| 10. Total Projects Costs (lines 8 + 9) | |

**Section B—Cost Sharing**

| | |
|---|---|
| 1. Project Income | $..... |
| 2. Non-Federal Funds (state, local, etc.) | |
| 3. In-Kind Contributions | |

**Section C—Estimate of Funding Needs**

| | |
|---|---|
| 1. Second Fiscal Year | $..... |
| 2. Third Fiscal Year | |
| 3. Fourth Fiscal Year | |

**Section D—Estimated Unobligated Funds**

| | |
|---|---|
| 1. Unobligated Federal Funds from Preceding Fiscal Year | $..... |
| 2. Unobligated Non-Federal Funds from Preceding Fiscal Year | |
| 3. Total Unobligated Funds from Preceding Fiscal Year (lines 2 + 3) | |

**Part III—Program Narrative**

Prepare the program narrative statement in accordance with the following instructions for all new grant programs and all new functions or activities for which support is being requested.

Note that the program narrative should encompass each program and each function or activity for which funds are being requested (see section II). Relevant selection criteria (included in this package) should be carefully examined, since they are the criteria upon which evaluation of an application will be made.

The application narrative should be organized to follow the exact sequence of the components in the selection criteria pertaining to the specific program competition for which the application is prepared. The program narrative should begin with an overview statement (Abstract) of the major points covered below.

*1. Objectives and Need for This Assistance*

Describe the problem and demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used.

Any relevant data based on planning studies should be included or footnoted. Projects involving Demonstration/Service activities should present available data, or estimates, for need in terms of number of handicapped children (by type of handicap and by type of service) in the geographic area involved.

*2. Results or Benefits Expected*

Identify results and benefits to be derived. Projects involved in Training and or Demonstration/Service activities should indicate the number of personnel to be trained or the number of children to be served.

*3. Approach*

A. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program, function or activity provided in the budget. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to others.

For example, an application for demonstration/service programs should describe the planned educational curriculum: the types of attainable accomplishments set for the children served; supplementary services including parent education; and the composition and responsibilities of an advisory council.

b. Provide for each grant program, function or activity, quantitative

projections of the accomplishments to be achieved.

An application for demonstration/service programs should project the number of children to receive demonstration/services by type of handicapping condition, and number of persons to receive inservice training.

c. Identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and successes of the project. For demonstration/service activities, evaluation precedures should be related to the child-centered objectives set for project participants.

For all activities, explain the methodology that will be used to evaluate project accomplishments.

d. List organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Especially for demonstration/service activities, describe the liaison with community or State organizations as it affects project planning and accomplishments.

e. Present a biographical sketch of the project director with the following information: Name, address, telephone number, background, and other qualifying experience for the project. Also, list the names, training and background for other key personnel engaged in the project.

**Note:** The application narrative should not exceed 30 double-spaced, typed pages (on one side only).

(20 U.S.C. 1422–1424; 1451–1452)

(Catalog of Federal Domestic Assistance No. 84.024, Handicapped Children's Early Education Program; 84.1025, Services for Deaf/Blind Children and Youth; 84.026, Educational Media Research Production, Distribution, and Training; 84.086, Program for Severely Handicapped Children)

Dated: November 13, 1987.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87–26603 Filed 11–17–87; 8:45 am]

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Federal Register

Wednesday
November 18, 1987

## Part VII

# Department of Education

**34 CFR Part 301**

**Preschool Grants for Handicapped Children Program; Notice of Proposed Rulemaking**

## DEPARTMENT OF EDUCATION

### 34 CFR Part 301

### Preschool Grants for Handicapped Children Program

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to issue regulations implementing the Preschool Grants for Handicapped Children program which is authorized by the Education of the Handicapped Act (EHA), as amended by Pub. L. 99–457, the Education of the Handicapped Act Amendments of 1986. These proposed regulations establish the requirements for implementing this new formula grant program to provide Federal financial assistance to States for serving handicapped children aged three through five.

**DATES:** Comments must be received on or before February 16, 1988.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Director, Division of Educational Services, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Rm. 4605, Switzer Building), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nancy Treusch, Division of Educational Services, Office of Special Education Programs, 400 Maryland Avenue, SW., (Room 4094, Switzer Building), Washington, DC 20202. Telephone: (202) 732–1097.

**SUPPLEMENTARY INFORMATION:** Pub. L. 99–457, enacted on October 8, 1986, revised section 619 of the EHA by replacing the Incentive Grants program with a new Preschool Grants for Handicapped Children program (Preschool Grants). The purpose of the Preschool Grants program is to provide additional Federal financial assistance to States for providing special education and related services to handicapped children aged three through five. All preschool handicapped children covered under the Preschool Grants program are entitled to the rights and protections under the EHA-Part B and the regulations at 34 CFR Part 300. These rights and protections include free appropriate public education, least restrictive environment, procedural safeguards, and due process.

Beginning in fiscal year 1988, States are required to use at least seventy-five percent of their Preschool Grants funds for making subgrants to local educational agencies (LEAs) and intermediate educational units (IEUs). States may use not more than twenty percent of the grant funds for planning and developing a statewide comprehensive delivery system for special educational services to handicapped children aged birth through five and for providing direct and support services to handicapped children aged three through five and not more than five percent of the grant for administering the program.

A new provision in the statute requires that States provide a free appropriate public education to all handicapped children aged three through five by fiscal year 1990 (or FY 1991 if certain appropriation levels are not met) in order to continue to be eligible for funding under this program. In addition, continued eligibility for EHA-Part B funds for handicapped children aged three through five and funding under Parts C through G for projects relating exclusively to handicapped children aged three through five are contingent upon eligibility for a Preschool Grant.

Early Childhood State Plan grants, formerly authorized under section 623(b) of the EHA were eliminated by Pub. L. 99–457. Section 619, however, permits States to use a portion of the funds allotted for use by SEAs for planning and developing a statewide comprehensive delivery system for handicapped children aged birth through five.

For fiscal years 1987 through 1989 a Preschool Grant award will be the total of two amounts. The first amount is based on the previous year's December 1 EHA-Part B count of three-through-five-year-old children with handicaps receiving special education and related services. The second amount (the bonus) is based upon the estimated increase in the total number of preschool handicapped children who will be served under EHA-Part B on December 1 of the current year.

A bonus payment of up to $3,800 for each additional child will be paid when: (1) There is an increase in the total number of three-through-five-year-old handicapped children served (i.e., those served under both the EHA-Part B and the Handicapped Program in Chapter 1 of the Education Consolidation and Improvement Act of 1981) from the previous child count; and (2) there is an increase in the total number of EHA-Part B children from the previous count. In order to determine the net estimated increase in three-through-five-year-old children served, a State must estimate the next Chapter 1 Handicapped program count as well as the next EHA-Part B child count. Downward or upward adjustments in the subsequent year's grant will be made if the actual child count differs from the estimate.

The Secretary is proposing that States must use estimates developed by individual LEAs and IEUs as the basis for developing the State's estimated increase in the total number of handicapped children aged three through five who will be served. This will result in more reliable data and will give States a basis for distributing the funds to LEAs and IEUs. It will allow LEAs and IEUs to anticipate the amount of money they will receive and assist them in their planning and implementation of the program.

#### Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these regulations are small LEAs and IEUs receiving Federal financial assistance under this program. However, the regulations would not have a significant economic impact on the small LEAs and IEUs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

#### Paperwork Reduction Act of 1980

Sections 301.12 and 301.20 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

### Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

### Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4094, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirement of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

### List of Subjects in 34 CFR Part 301

Education, Education of the handicapped, Grant programs—education, Report and Recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.173)

Dated: October 6, 1987.

**William J. Bennett,**

*Secretary of Education.*

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 301 to read as follows:

## PART 301—PRESCHOOL GRANTS FOR HANDICAPPED CHILDREN

### Subpart A—General

Sec.



### Subpart B—How Does a State Apply for a Grant?



### Subpart C—How Does the Secretary Make a Grant to a State?



### Subpart D—How Does a State Make a Subgrant to an Applicant?



Authority: 20 U.S.C. 1419, unless otherwise noted.

## Subpart A—General

### § 301.1 What is the Preschool Grants for Handicapped Children program?

The Preschool Grants for Handicapped Children program (Preschool Grants program) provides grants to States to assist them in—

(a) Providing special education and related services to handicapped children aged three through five;

(b) Planning and developing a statewide comprehensive delivery system for handicapped children from birth through age five; and

(c) Providing direct and support services to handicapped children aged three through five.

(Authority: 20 U.S.C. 1419)

### § 301.2 Who is eligible for an award?

(a) The Secretary makes a grant to each State educational agency (SEA) that submits an application that meets the requirements of this part.

(b) A State may make a subgrant to any local educational agency (LEA) or intermediate educational unit (IEU) that submits an approvable application to the State educational agency.

(Authority: 20 U.S.C. 1419)

### § 301.3 What kinds of activities may be assisted?

Under the Preschool Grants program the Secretary makes a grant to a State to conduct the following activities:

(a) Assist LEAs and IEUs in providing special education and related services to handicapped children aged three through five.

(b) Plan and develop a statewide comprehensive service delivery system for handicapped children from birth through age five.

(c) Provide direct and support services to handicapped children aged three through five.

(Authority: 20 U.S.C. 1419)

### § 301.4 What regulations apply?

The following regulations apply to the Preschool Grants program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs).

(b) The regulations in this Part 301.

(c) The regulations in 34 CFR Part 300.

(Authority: 20 U.S.C. 1419)

### § 301.5 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in the Act.

State
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant period
Local educational agency
Secretary
Subgrant

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means the Education of the Handicapped Act, as amended.

"Comprehensive service delivery system" means a State's plans and procedures, including goals and objectives, for identifying all handicapped children from birth through age five and providing special education and related services to those children in accordance with State law, policy, or practice.

"Excess appropriation" means that portion of each appropriation for fiscal years 1988 and 1989 remaining after the maximum amount of funds for each child counted has been awarded to States based on the most recent child count, under 34 CFR Part 300, of handicapped children aged three through five receiving special education and related services.

"Part B child count" means the child count required by Section 611(a)(3) of the Act.

"Preschool" means the age range of three through five.

(Authority: 20 U.S.C. 1402, 1419)

## Subpart B—How Does a State Apply for a Grant?

### § 301.10 How does a State become eligible to receive a grant?

(a) For fiscal years 1988 and 1989, and for fiscal year 1990 if certain aggregate appropriation amounts contained in section 619(b)(2) of the Act are not met, a State is eligible to receive a grant if—

(1) The Secretary approves its State plan under 34 CFR Part 300;

(2) The State provides special education and related services to any handicapped children aged three through five; and

(3) The State submits an application to the Secretary that meets the requirements in this part.

(b) Beginning in fiscal year 1990, or fiscal year 1991 if certain aggregate appropriation amounts referred to in section 619(b)(2) of the Act are not met, a State is eligible to receive a grant if—

(1) The Secretary approves its State plan under 34 CFR Part 300;

(2) The State has policies and procedures that assure the provision of a free appropriate public education for all handicapped children aged three through five in accordance with the requirements in 34 CFR Part 300; and

(3) The State submits an application to the Secretary that meets the requirements in this part.

(Authority: 20 U.S.C. 1419(a), (b))

### § 301.11 When does a State apply for a grant?

(a) An SEA shall submit a Preschool Grants application effective for fiscal years 1988 through 1989.

(b) If the aggregate appropriation levels specified in section 619(b)(2) are met for fiscal year 1990, the SEA shall submit a new application containing the information in § 301.12(b) of this part.

(c) If the aggregate appropriation levels specified in section 619(b)(2) are not met until fiscal year 1991—

(1) The SEA shall extend its fiscal years 1988–89 application through fiscal year 1990; and

(2) The SEA shall submit a new application for fiscal year 1991 containing the information in § 301.12(b) of this part.

(d) The application submitted under paragraph (b) or (c)(2) of this section shall be extended annually until the SEA submits its next State plan under 34 CFR Part 300. The SEA shall then and thereafter submit its Preschool Grants application with the three-year State plan under 34 CFR Part 300.

(Authority: 20 U.S.C. 1419(a)(3), (b)(4))

### § 301.12 What information must be included in an application for a grant?

(a) The fiscal years 1988–89 Preschool Grants application must include—

(1) A budget showing that the grant funds will be distributed according to the requirements in § 301.30;

(2) For that portion of the grant allotted for use by the SEA—

(i) A description of the direct and support services, if any, that the SEA will provide for handicapped children aged three through five; and

(ii) A description of the activities the SEA will undertake, if any, regarding the planning and development of a statewide comprehensive service delivery system for handicapped children from birth through age five;

(3) An assurance that not more than 5% of the grant will be used for administrative costs and a description of how the administrative funds will be used.

(4) For the funds to be distributed to LEAs and IEUs—

(i) An estimate of the number and percent of LEAs and IEUs in the State that will receive a subgrant;

(ii) An estimate of the number of LEAs and IEUs that will receive a subgrant under a consolidated application; and

(iii) An estimate of the number of consolidated applications that will be funded and the average number of LEAs and IEUs for each consolidated application.

(b) For the application submitted under § 301.11(b) or (c)(2), and thereafter, the Preschool Grants application must include—

(1) The information in paragraph (a) of this section; and

(2) An assurance that the State's EHA-Part B State plan contain policies and procedures that assure the availability under State law and practice of a free appropriate public education for all handicapped children aged three through five.

(Authority: 20 U.S.C. 1419(a)(3), (b)(4))

## Subpart C—How Does the Secretary Make a Grant to a State?

### § 301.20 What requirements apply to estimating the number of handicapped children who will be served in order to receive funds from an excessive appropriation?

(a) In order to receive funds from an excess appropriation based on an estimated increase in the number of handicapped children aged three through five who will be receiving special education and related services under Part B of the Act on December 1 of the following year, a State must—

(1) Have an increase in the total number of handicapped children aged three through five served under both 34 CFR Parts 300 and 302 from the previous year; and

(2) Have an increase from the previous year in the total number of handicapped children aged three through five served under 34 CFR Part 300.

(b) Each SEA shall develop and implement procedures to estimate accurately the increase in the number of handicapped children aged three through five who will be receiving special education and related services under 34 CFR Parts 300 and 302 on the count dates for these programs of the next fiscal year.

(c) The procedures for making an estimation in paragraph (b) of this section must be based upon estimates from LEAs and IEUs of the number of additional handicapped children aged three through five that LEAs or IEUs expect to be serving under 34 CFR Part 300 on the next December 1.

(d) The SEA shall provide the estimates on forms provided by the Secretary no later than February 1 of the year in which the Secretary requires estimates.

(e) The SEA shall attach a copy of the procedures used to make the estimates under paragraph (c) of this section to the estimated count form.

(Authority: 20 U.S.C. 1419)

### § 301.21 How are adjustments made if a State overestimates or underestimates the increase in preschool handicapped children served?

If the actual number of additional handicapped children aged three through five served under 34 CFR Part 300 in fiscal year 1988 or 1989 differs from the estimate submitted by a State for that fiscal year, the Secretary increases or decreases the State's grant for the next fiscal year based upon the number of handicapped children who actually were served.

(Authority: 20 U.S.C. 1419(a)(2))

## Subpart D—How Does a State Make a Subgrant to an Applicant?

### § 301.30 How does a State distribute the grant money?

(a) A State shall distribute at least 75 percent of its grant to LEAs and IEUs to be used for handicapped children aged three through five.

(b) A State may use not more than 20 percent of the grant for—

(1) The planning and development of a statewide comprehensive service delivery system for handicapped children from birth through age five; and

(2) The provision of direct and support services for handicapped children aged three through five.

(c) A State may use not more than five percent of the grant for the costs of administering the grant.

(d) If an SEA provides services to preschool handicapped children because some or all LEAs and IEUs are unable or unwilling to provide appropriate programs, the SEA may use payments that would have been available to those LEAs and IEUs to provide special education and related services to handicapped children aged three through five residing in the area served by those LEAs and IEUs.

(Authority: 20 U.S.C. 1414(d), 1419(c)(2))

**§ 301.31 What is the amount of a subgrant to a local educational agency?**

From the amount of funds available to LEAs and IEUs in the State, each LEA and IEU is entitled to the sum of—

(a) An amount that bears the same ratio to the maximum amount awarded to the State based on the previous child count as the number of handicapped children aged three through five in that agency who were receiving a free appropriate public education on the most recent EHA-Part B child count bears to the aggregate number of handicapped children aged three through five receiving a free appropriate public education on the most recent Part B child count in all LEAs and IEUs that apply to the SEA for Preschool Grants funds; and

(b) An amount that bears the same ratio to the State's excess appropriation, if any, as the LEA's or IEU's estimated count of additional handicapped children aged three through five who will be receiving a free appropriate public education on the next Part B child count bears to the aggregate number of additional handicapped children aged three through five who will be receiving a free appropriate public education at the time of the next Part B child count in all LEAs and IEUs that apply to the SEA for Preschool Grants funds.

(Authority: 20 U.S.C. 1419(c)(3))

**§ 301.32 How are adjustments made to a local educational agency's subgrant?**

If the actual number of additional handicapped children aged three through five served under 34 CFR Part 300 in fiscal year 1988 or 1989 differs from the estimate submitted by an LEA or IEU for that fiscal year, the State shall increase or decrease the LEA's or IEU's grant based upon the number of handicapped children who were actually served.

(Authority: 20 U.S.C. 1419(c)(3)(A), (B))

[FR Doc. 87-26602 Filed 11-17-87; 8:45 am]
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Federal Register

Wednesday
November 18, 1987

Part VIII

# Department of Education

34 CFR Part 303

Early Intervention Program for Infants and Toddlers With Handicaps; Notice of Proposed Rulemaking

## DEPARTMENT OF EDUCATION

### 34 CFR Part 303

### Early Intervention Program for Infants and Toddlers With Handicaps

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to issue regulations implementing the new program for infants and toddlers with handicaps, established under the 1986 amendments to the Education of the Handicapped Act (EHA). These proposed regulations are intended to assist States in applying for funds under this new authority, and to ensure that an effective program for early intervention services is established in each participating State.

**DATES:** Comments must be received on or before January 19, 1988.

**ADDRESS:** All comments concerning these proposed regulations should be addressed to R. Paul Thompson, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4605 M/S 2313–4600), Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** R. Paul Thompson or Thomas B. Irvin, Telephone: (202) 732–4278.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

The Education of the Handicapped Act Amendments of 1986 (Pub. L. 99–457) added a new State formula grant program to assist States in establishing a statewide sysem of early intervention services for infants and toddlers with handicaps and their families. This new program (designated as Part H of the EHA) replaces, and substantially expands, the State grant provisions established in 1983 under the Handicapped Children's Early Education Program (HCEEP). The EHA Amendments of 1983 (Pub. L. 98–199) authorized the Secretary to make grants under the HCEEP to assist States in planning, developing, and implementing comprehensive delivery systems to provide special education and related services to handicapped children from birth through five years of age. Part H focuses on similar activities, but limits the age range to children from birth through two years of age.

Part H is designed to build upon existing State systems of early intervention services and to facilitate the development of systems in those States desiring to serve young children with handicaps, from birth through age two. The program enables States to use funds to develop a statewide system that fits their own individual characteristics. During the first two years of participation, it is expected that funds under Part H will be used to continue the planning, development, and implementation activities that some States had begun under the EHA Amendments of 1983.

The following are some of the key features of Part H that are unique to this new grant program:

*1. Birth Through Age Two Population*

Part H is the only program administered by the Department of Education that focuses exclusively on meeting the needs of infants and toddlers with handicaps. Children in this age group have been traditionally served through programs administered by the Department of Health and Human Services.

*2. Governor's Designation of Lead Agency*

Under Part H, the Governor of each State designates the State agency that will be responsible for: (a) Submitting applications for, and receiving funds under, this program, and (b) serving as the lead agency responsible for the general administration of program and activities carried out under this part. Depending upon existing State law or practice, the agency that is named in any given State could be the department of education, health, mental health, or some other appropriate department of State government designated by the Governor.

*3. Mandate for Coordination*

Each statewide system of early intervention services is to be planned and carried out as a coordinated, interagency, multidisciplinary program. Part H requires the Governor of each State to establish: (1) A State Interagency Coordinating Council to advise and assist in the planning, development, and implementation activities necessary to operate the interagency statewide system, and (2) a single line of responsibility in a lead agency designated to carry out the general administration, supervision, and monitoring of programs and activities required under Part H. The State Interagency Coordinating Council has been assigned specific responsibilities for assisting in the identification of sources of fiscal and other support for services, assignment of financial responsibility to the appropriate agency, and promotion of interagency agreements.

No one agency generally has the funding resources, services, or authority to provide all appropriate early intervention services for all infants and toddlers with handicaps. The legislative history of Pub. L. 99–457 underscores the concept of interagency coordination, by acknowledging that even in States currently requiring a free appropriate public education from birth, no single agency provides all services to all children with handicaps. Rather, existing service delivery systems represent interdependence among public and private agencies and organizations at the State and local levels.

*4. Role of the Family*

Part H recognizes the unique role that families play in the development of infants and toddlers with handicaps. It is clear from the legislative history, and from the requirements in Part H itself, that provision must be made by States for families to play an active role in the planning and provision of early intervention services. Thus, these regulations will have a positive impact on the family and are consistent with the requirements of Executive Order 12606—The Family. The regulations strengthen the authority and participation of parents in the education of their children.

#### B. Nature and Scope of Proposed Regulations

In preparing these proposed regulations, an attempt has been made to avoid additional requirements that go beyond the statutory provisions in Part H. In several instances, clarifying language has been added—where it would be helpful to State agencies, parents, and other interested parties in understanding a given statutory provision. Generally, when clarifying language has been added, it has been incorporated from, or based on, the legislative history of Pub. L. 99–457.

The approach described above has been followed because it is consistent with the Administration's commitment to avoid regulations that are unduly burdensome, or that limit the discretion of State agencies in carrying out the program. Because of the unique features described in the preceding sections of this preamble (e.g., States being at different stages of development of a statewide system, and the significance of interagency coordination), each State needs maximum flexibility in implementing the requirements of Part H.

### C. Similarities and Differences Between Part B and Part H of the EHA

Several requirements under Part H are linked to specific provisions under Part B of the EHA (Assistance to States for Education of Handicapped Children). For example, the statutory requirement concerning the establishment and maintenance of personnel standards is identical under Part B and Part H; therefore, the requirements of the proposed regulations implementing that provision are identical under both programs.

There are several other areas under Part H that are linked to Part B, either by specific statutory reference or through the legislative history of Pub. L. 99-457. A description of the similarities and differences of these overlapping provisions is included below:

*1. Child Find System*

Part H requires each statewide system of early intervention services to include "a comprehensive child find system, *consistent with Part B*, including a system for making referrals to service providers that includes timelines and provides for the participation by primary referral sources." (Emphasis added)

The Part B provision requires each State educational agency (SEA) to ensure that all handicapped children in the State, from birth through age 21, are identified, located, and evaluated. While this requirement has been in effect for approximately 10 years, some evidence suggests that there may be a lack of coordination between the States' Part B procedures and the child find efforts of other public agencies in the State that have a direct interest in identifying, evaluating, and serving infants and toddlers with handicaps.

Thus, to ensure that all children covered under Part H are identified and referred for evaluation, these proposed regulations provide that a State's child find system must "be coordinated with all other major child find efforts conducted by various public and private agencies."

*2. Procedural Safeguards*

The procedural safeguards under Part H overlap with several of the provisions under Part B (e.g., written prior notice, and surrogate parents). However, there are differences between the procedures for resolving individual child complaints under Part H and the due process hearing provisions under Part B.

The due process hearing requirements under Part B are more detailed than the complaint resolution provisions under Part H. For example, Part B includes hearing, appeal, and review procedures, sets conditions regarding impartiality, and contains specific hearing rights for parents.

The corresponding provision in Part H requires each statewide system to provide for "[t]he timely administrative resolution of complaints by parents." (EHA-H, Sec. 680(1).)

While the Part B requirements are more specific than Part H, the legislative history of Part H (1) provides that a State may meet the procedural safeguard requirements under Part H by adopting the requirements under Part B, and (2) expresses Congressional intent that the State must ensure that an impartial individual be assigned responsibility for resolving complaints by parents. Both of these concepts are addressed in the proposed regulations.

*3. IEPs vs IFSPs*

The Part H provisions concerning individualized family service plans (IFSPs) are based, in part, on the individualized education program (IEP) requirements under Part B. However, while there are similarities between these two provisions, there also are some distinct differences. For example, the required content of the IFSP is more comprehensive than the IEP, and includes several components that go beyond the scope of the IEP.

States that currently provide special education and related services to eligible children, birth through age two, in accordance with the IEP requirements under Part B, must ensure that, by the fifth year of participation, (1) public and private service providers meet the IFSP requirements, and (2) any eligible children served under Part H will receive early intervention services in accordance with an IFSP.

*4. Special Education and Related Services vs Early Intervention Services*

The requirements for providing services to handicapped children under Part H is broader than under Part B. Under Part B, related services may only be provided if those services are necessary to assist a child to benefit from special education. If a child does not need special education, there can be no related services, as that term is defined in the Part B regulations. However, under Part H, an infant or toddler might receive only a service described under Part B as a "related service" (e.g., physical or occupational therapy) without receiving special instruction. Part H also specifically requires the provision of some services that are not required in Part B (e.g., case management services).

Part H uses the term "early intervention services" to include both "special instruction" and various services that are defined as "related services" under Part B. These proposed regulations incorporate some of the definitions of related services from the Part B regulations (e.g., occupational therapy, physical therapy, and psychological services). The Secretary requests comment on whether the Part B definitions should be used, or whether other definitions should be developed for the early intervention program.

States that have been serving infants and toddlers with handicaps under Part B, and are now participating under Part H, must ensure that, by the fifth year of participation, all requirements for the provision of early intervention services will be met.

### D. Use of Notes in the Regulations

In the text of these proposed regulations, a series of notes has been included following selected sections. These notes provide explanatory material or suggestions for meeting specific legal requirements. Where a note sets forth a permissible course of action, a recipient may either rely upon the note or take any other course of action that meets the applicable requirements.

### Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are public or private providers of early intervention services. However, the regulations would not have a significant economic impact on these service providers because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure proper expenditure of funds.

### Paperwork Reduction Act of 1980

Sections 303.21, 303.32, 303.33, 303.35-303.43, 303.61, 303.69, 303.73, 303.75, 303.84, and 303.86 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department

of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

### Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on the processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

### Invitation to comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. The written comments should: (1) Include the name, title, address, and telephone number of the commenter, (2) identify each specific subpart and section of the regulations on which comments are being made, (3) describe the concern with respect to that subpart and section, and (4) specify the recommended action to be taken.

The Secretary particularly requests comment on the following:

- The appropriateness of using Part B definitions for certain related services that are listed under the Part H definition of early intervention services (See C-4, preceding).
- Whether additional guidance should be provided on the nature and scope of the public awareness program under § 303.63.
- Whether 30 days is a reasonable timeline for completing the evaluation of a child after referral. (See §§ 303.65(d) and 303.67.)

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4605, 300 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

### Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

### List of Subjects in 34 CFR Part 303

Education, Education of handicapped, Grant Program education, Medical personnel, State educational agencies.

Dated: October 6, 1987.

(Catalogue of Federal Domestic Assistance Number 84.181; Early Intervention Programs for Infants and Toddlers with Handicaps)

**William J. Bennett,**

*Secretary of Education.*

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 303 to read as follows:

## PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH HANDICAPS

### Subpart A—General

#### Purpose, Eligibility, and other General Provisions

Sec.



#### Definitions



#### Applicable Definitions in EDGAR and Part B of the Act



### Subpart B—State Application for a Grant

#### General Requirements



#### Statement of Assurances



#### General Requirements for a State Application



#### Specific Application Requirements for Years One Through Five and Thereafter



#### Participation by the Secretary of the Interior



### Subpart C—Procedures for Making Grants to States



### Subpart D—Minimum Components of a Statewide System of Early Intervention Services

#### General Components



#### Identification and Evaluation



#### Individualized Family Service Plan

**Authority:** 20 U.S.C. 1471–1485, unless otherwise noted.

## Supart A—General

### Purpose, Eligibility, and Other General Provisions

#### § 303.1 Purpose of the early intervention program for infants and toddlers with handicaps.

The purpose of this part is to provide financial assistance to States—

(a) To develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for infants and toddlers with handicaps and their families;

(b) To facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage); and

(c) To enhance the States' capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with handicaps and their families.

(Authority: 20 U.S.C. 1471(b))

#### § 303.2 Eligible applicants for an award.

Eligible applicants include the 50 States, Puerto Rico, the District of Columbia, the Secretary of the Interior, and the following jurisdictions: Guam, American Samoa, the Virgin Islands, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1484)

#### § 303.3 Activities that may be supported under this part.

Funds under this part may be used for the following activities:

(a) To plan, develop, and implement a statewide system of early intervention services for infants and toddlers with handicaps and their families.

(b) To fund direct services that are not otherwise provided from other public or private sources.

(c) To expand and improve on services that are otherwise available.

(Authority: 20 U.S.C. 1473, 1479)

#### § 303.4 Applicable regulations.

(a) The following regulations apply to this part:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions That Apply To Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(2) The regulations in this Part 303.

(3) The following regulations in 34 CFR Part 300 (Assistance to States for Education of Handicapped Children): § 300.6; § 300.9; § 300.10; § 300.12; § 300.13(b)(1), (4), (5), (7), (8), (11) and (12); § 300.500; and §§ 300.581—300.586.

(b) In applying the regulations cited in paragraphs (a)(1) and (a)(3) of this section, any reference to—

(1) "State educational agency" means the lead agency under this part; and

(2) "Special education," "related services," "free public education," or "education" means early intervention services under this part.

(Authority: 20 U.S.C. 1401–1418; 1420; 1479)

### Definitions

#### § 303.5 Act.

As used in this part, "Act" means the Education of the Handicapped Act.

(Authority: 20 U.S.C. 1401 *et seq.*)

#### § 303.6 Case management services.

(a) As used in this part, "case management services" means services provided to families of infants and toddlers with handicaps to assist them in gaining access to early intervention services identified in the individualized family service plan.

(b) Case management services include—

(1) Coordinating the performance of evaluations and participating in the development of the individualized family service plan;

(2) Assisting families in identifying available service providers;

(3) Coordinating and monitoring the delivery of services, including coordinating the provision of early intervention services with other services that the child or family needs or is being provided, but that are not required under this part (e.g., medical services for other than diagnostic or evaluation purposes, respite care, and the purchase of personal prosthetic devices such as braces, hearing aids, and glasses); and

(4) Facilitating the development of a transition plan to preschool services, where appropriate.

(Authority: 20 U.S.C. 1472(2))

#### §303.7 Child; children.

As used in this part, "child" and "children" mean "infants and toddlers with handicaps," as that term is defined in § 303.13.

(Authority: 20 U.S.C. 1472(1))

#### §303.8 Council.

As used in this part, "Council" means the State Interagency Coordinating Council.

(Authority: 20 U.S.C. 1472(4))

#### § 303.9 Developmental delay.

As used in this part, "developmental delay," has the meaning given to that term by a State under § 303.60.

(Authority: 20 U.S.C. 1472(3))

#### §303.10 Early intervention services.

(a) *General.* As used in this part, "early intervention services" means services that—

(1) Are designed to meet the developmental needs of infants and toddlers with handicaps in one or more of the areas listed in § 303.13(a);

(2) Are provided in conformity with an individualized family service plan;

(3) Are provided under public supervision;

(4) Meet the standards of the State, including the rquirements of this part; and

(5) Are provided at no cost unless Federal or State law provides for a system of payments by families, including a schedule of sliding fees.

(b) *Types of services.* Early intervention services include—

(1) Audiology;

(2) Case management services, as defined in § 303.6;

(3) Early identification, screening, and assessment services;

(4) Family training, counseling, and home visits;

(5) Health services, as defined in § 303.11;

(6) Medical services only for diagnostic and evaluation purposes;

(7) Occupational therapy;

(8) Physical therapy;

(9) Psychological services;

(10) Special instruction, as defined in § 303.14; and

(11) Speech pathology.

(c) *Qualified personnel.* Early intervention services must be provided by qualified personnel, including—

(1) Audiologists;

(2) Nurses, including school nurses;

(3) Nutritionists;

(4) Occupational therapists;

(5) Physical therapists;

(6) Physicians;

(7) Psychologists, including school psychologists;

(8) Social workers, including school social workers;

(9) Special educators; and

(10) Speech and language patholigists.

(Authority: 20 U.S.C. 1472(2))

**Note:** The lists of services and personnel in paragraphs (b) and (c) are not exhaustive and may include other types of services or personnel. Examples of other eligible services, include transportation, rehabilitation technology, and music therapy.

### § 303.11 Health services.

As used in this part, "health services" means services necessary to enable a child to benefit from other early intervention services (e.g., clean intermittent catheterization). The term does not include those services that are surgical or purely medical in nature (e.g., cleft palate surgery, surgery for club foot, management of congenital heart ailments, management of cystic fibrosis, and shunting of hydrochephalus).

(Authority: 20 U.S.C. 1472(2))

### § 303.12 IFSP.

As used in this part, "IFSP" means the individualized family service plan.

(Authority: 20 U.S.C. 1477)

### § 303.13 Infants and toddlers with handicaps.

(a) As used in this part, "infants and toddlers with handicaps" means children from birth through age two who need early intervention services because they—

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Cognitive development, physical development, language and speech development, psychosocial development, or self-help skills; or

(2) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(b) The term may also include, at a State's discretion, children from birth through two who are at risk of having substantial developmental delays if early intervention services are not provided.

(Authority: 20 U.S.C. 1472(1))

**Note:** The phrase "have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay" is included to enable States to serve categories of infants and toddlers who will need early intervention services, even though many may not exhibit developmental delays at the time of diagnosis (e.g., children with sensory impairments, inborn errors of metabolism, microcephaly, fetal alcohol syndrome, epilepsy, and Down syndrome and other chromosomal abnormalities).

### § 303.14 Special instruction.

(a) As used in this part, "special instruction" means instruction provided to infants and toddlers and their families by special educators or other qualified personnel.

(b) Special instruction may be provided in the child's home, early intervention centers, hospitals and clinics, or other settings, as appropriate to the age and needs of the individual child.

(Authority: 20 U.S.C. 1472(2))

## Applicable Definitions in Edgar and Part B of the Act

### § 303.15 EDGAR definitions that apply.

The following terms used in this part are defined in 34 CFR 77.1:

| | |
|---|---|
| Applicant | Grant |
| Award | Grantee |
| Contract | Grant period |
| Department | Private |
| EDGAR | Public |
| Equipment | Secretary |
| Fiscal year | State |

(Authority: 20 U.S.C. 1471 *et seq.*)

### § 303.16 Applicable definitions in the regulations for Part B of the Act.

The following terms used in this part are defined in 34 CFR Part 300, the regulations that implement Part B of the Education of the Handicapped Act. The section of Part 300 that contains the definition is given in parentheses.

Audiology (300.13(1))
Include (300.6)
Medical services (300.13(4))
Native language (300.9)
Occupational therapy (300.13(5))
Parent (300.10)
Personally identifiable information (300.500)
Physical therapy (300.13(7))
Psychological services (300.13(8))
Public agency (300.11)
Qualified (300.12)
Speech pathology (300.13(12))

(Authority: 20 U.S.C. 1401(21), 1412–1417)

## Subpart B—State Application for a Grant

### General Requirements

### § 303.20 Conditions of assistance.

In order to receive funds under this part for any fiscal year, a State shall—

(a) Submit an annual application to the Secretary through the lead agency designated by the Governor; and

(b) Have on file with the Secretary the statement of assurances required under §§ 303.23–303.30.

(Authority: 20 U.S.C. 1478)

### § 303.21 Public participation.

(a) *General.* (1) Before a State submits its annual application under this part, and before the adoption of policies in that application, the State shall provide—

(i) Public hearings;

(ii) Adequate notice of the hearings; and

(iii) An opportunity for comment by the general public.

(2) As used in paragraph (a)(1) of this section, the term "policies" includes—

(i) A State's definition of "developmental delay;"

(ii) A statement of what fees will be charged for early intervention services and the basis for those fees;

(iii) A State's policy regarding the provision of services to children who are "at risk;"

(iv) The components of the statewide system; and

(v) Other policies required to be included in the State application.

(b) *Notice.* The notice of public hearings must be published or announced—

(1) In newspapers or other media, or both, with coverage adequate to notify the general public throughout the State about the hearings;

(2) Sufficiently in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate; and

(3) In sufficient detail to inform the public about—

(i) The purpose and scope of the State application and its relationship to Part H of the Act;

(ii) The date, time, and location of each hearing; and

(iii) The procedures for providing oral comments or submitting written comments.

(Authority: 20 U.S.C. 1478)

**§ 303.22 How the Secretary disapproves a State's application or statement of assurances.**

The Secretary follows the procedures in 34 CFR 300.580–300.586 before disapproving a State's application or statement of assurances submitted under this part.

(Authority: 20 U.S.C. 1478)

**Statement of Assurances**

**§ 303.23 General.**

A statement of assurances is a document that—

(a) Contains the information in §§ 303.24–303.30;

(b) Is submitted only once and remains in effect throughout the term of a State's participation under this part; and

(c) Is filed with the Secretary at the time the State submits its application for the first year of assistance under this part.

(Authority: 20 U.S.C. 1478(b))

**§ 303.24 Reports and records.**

The statement must provide for—

(a) Making reports in such form and containing such information as the Secretary may require; and

(b) Keeping records and affording access to those records as the Secretary may find necessary to assure the correctness and verification of reports and of proper disbursement of funds provided under this part.

(Authority: 20 U.S.C. 1478(b)(4))

**§ 303.25 Control of funds and property.**

The statement must provide assurance satisfactory to the Secretary that the control of funds provided under this part, and title to property acquired with those funds, is in a public agency for the uses and purposes provided in this part, and that a public agency administers the funds and property.

(Authority: 20 U.S.C. 1478(b)(3))

**§ 303.26 Prohibition against commingling.**

The statement must include an assurance satisfactory to the Secretary that funds made available under this part will not be commingled with State funds.

(Authority: 20 U.S.C. 1478(b)(5)(A))

**§ 303.27 Prohibition against supplanting.**

The statement must include an assurance satisfactory to the Secretary that Federal funds made available under this part will be used to supplement and increase the level of State and local funds expended for infants and toddlers with handicaps and their families and in no case to supplant those State and local funds.

(Authority: 20 U.S.C. 1478(b)(5)(B))

**§ 303.28 Fiscal control.**

The statement must provide assurance satisfactory to the Secretary that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part.

(Authority: 20 U.S.C. 1478(b)(6))

**§ 303.29 Assurance regarding nonsubstitution of funds.**

The statement must include an assurance satisfactory to the Secretary that the State will comply with the requirements in § 303.85(b).

(Authority: 20 U.S.C. 1478(b)(2))

**§ 303.30 Assurance regarding use of funds.**

The statement must include an assurance satisfactory to the Secretary that the funds paid to the State under this part will be expended in accordance with the provisions of this part.

(Authority: 20 U.S.C. 1478(b)(1))

**General Requirements for a State Application**

**§ 303.31 General.**

A State's annual application under this program must contain the information required in §§ 303.32–303.37.

(Authority: 20 U.S.C. 1478(a))

**§ 303.32 Information about State Interagency Coordinating Council.**

Each application must include information demonstrating that the State has established a State Interagency Coordinating Council that meets the requirements of Subpart E.

(Authority: 20 U.S.C. 1478(a)(2))

**§ 303.33 Designation of lead agency.**

Each application must include a designation of the lead agency in the State that will be responsible for the administration of funds provided under this part.

(Authority: 20 U.S.C. 1478(a)(1))

**§ 303.34 Assurance regarding use of funds.**

Each application must include an assurance that funds received under this part will be used to assist the State to plan, develop, and implement the Statewide system required under §§ 303.60–303.86.

(Authority: 20 U.S.C. 1475, 1478(a) (2), (3))

**§ 303.35 Description of use of funds.**

Each application must include the following information:

(a) For both the lead agency and the State Interagency Coordinating Council—

(1) A list of administrative positions, and a description of duties for each person whose salary is paid in whole or in part with funds awarded under this part; and

(2) For each position, the percentage of salary paid with those funds.

(b) A description of the nature and scope of the activities to be carried out with funds under this part during the period for which the award is to be made. The description must include information about—

(1) The Statewide planning, development, and implementation activities to be carried out by the Council, the lead agency, and any other agencies in the State that are involved in early intervention services;

(2) The approximate amount of funds that will be expended to carry out each activity described in paragraph (b)(1) of this section; and

(3) Any direct services that will be provided.

(Authority: 20 U.S.C. 1478(a)(3), (a)(5))

**§ 303.36 Information about public participation.**

(a) Each application must include—

(1) Information demonstrating that the State has met the requirements on public participation under § 303.21;

(2) A summary of the public comments received; and

(3) The State's responses to those comments.

(b) The information in paragraph (a)(1) of this section must include copies of news releases and advertisements used to provide notice, and a list of the dates and locations of the hearings.

(Authority: 20 U.S.C. 1478(a)(4))

**§ 303.37 Equitable distribution of resources.**

Each application must include a description of the procedures used by the State to ensure an equitable distribution of resources made available under this part among all geographic areas within the State.

(Authority: 20 U.S.C. 1478(a)(6))

**Specific Application Requirements for Years One Through Five and Thereafter**

**§ 303.38 Applications requirements for first and second years.**

A State's annual application for the first and second years of participation

under this program must contain the information required in §§ 303.32–303.37.

(Authority: 20 U.S.C. 1475, 1478(a))

**§ 303.39 Third year applications.**

A State's application for the third year of participation under this program must contain—

(a) The information required in §§ 303.32–303.37;

(b) Information and assurances demonstrating that the State has adopted a policy that incorporates all of the components of a statewide system of early intervention services, as required in §§ 303.60–303.86, or that the State has obtained a waiver from the Secretary; and

(c) Information and assurance satisfactory to the Secretary that the statewide system will be in effect no later than the beginning of the fourth year of the State's participation, except that with respect to IFSPs, the State need only—

(1) Conduct multidisiplinary assessments;

(2) Develop IFSPs; and

(3) Make available case management services.

(Authority: 20 U.S.C. 1475(b), 1478(a))

**§ 303.40 Waiver of the policy adoption requirement for the third year.**

The Secretary may award a grant to a State under this part for the third year even if the State has not adopted the policy required in § 303.39(b), if the State, in its application—

(a) Demonstrates that it has made a good faith effort to adopt such a policy;

(b) Provides the reasons why it was unable to meet the timeline;

(c) Describes the steps remaining before the policy is adopted; and

(d) Provides an assurance that the policy will go into effect before the beginning of the fourth year of its participation under this part.

(Authority: 20 U.S.C. 1475(b)(2))

**Note:** An example of when the Secretary may grant a waiver is a situation in which a policy is awaiting action by the State legislature, but the legislative session does not commence until after the State's application must be submitted.

**§ 303.41 Fourth year applications.**

A State's application for the fourth year of participation under this program must contain all of the information required by § 303.39 (State application for the third year). However, in its application for the fourth year, the State may incorporate by reference any portions of its third year application that are still in effect.

(Authority: 20 U.S.C. 1475(b), 1478)

**§ 303.42 States with mandates as of September, 1986 to serve children with handicaps from birth.**

(a) Subject to the requirements of paragraph (b) of this section, a State that has in effect a State law, enacted before September 1, 1986, that requires the provision of a free appropriate public education to children with handicaps from birth through age two is eligible for a grant under this part for the first through the fourth year of its participation.

(b) A State meeting the conditions of paragraph (a) of this section must—

(1) Have on file with the Secretary a statement of assurances containing the information required in §§ 303.24–303.30;

(2) Submit an annual application for years one through four that contains the information in §§ 303.32–303.37;

(3) Meet the public participation requirements in § 303.21; and

(4) Provide a copy of the State law that requires the provision of a free appropriate public education to children with handicaps from birth through age two.

(c) In order to receive funds under this part for the fifth and succeeding years, the State must submit an application that meets the requirements of § 303.43.

(Authority: 20 U.S.C. 1475(d))

**Note:** A State that qualifies under this section is exempted from submitting the information about the Statewide system of early intervention services in §§ 303.60–303.86 that is required in the applications for years three and four. However, in order to receive funds under this part for the fifth and succeeding years, the State must include in its application for those years information demonstrating that the statewide system is in effect.

**§ 303.43 Applications for year five and each year thereafter.**

A State's annual applications for the fifth and succeeding years of participation under this program must contain—

(a) The information required in §§ 303.32–303.37; and

(b) Information and assurances demonstrating to the satisfaction of the Secretary that the State has in effect the statewide system required in §§ 303.60–303.86.

(Authority: 20 U.S.C. 1475(c), 1478(a))

**Participation by the Secretary of the Interior**

**§ 303.44 Eligibility of the Secretary of the Interior for assistance.**

The Secretary of the Interior may recieve an award under this part only after submitting an application that—

(a) Meets the conditions of assistance required by § 303.20; and

(b) Is approved by the Secretary.

(Authority: 20 U.S.C. 1484(b))

## Subpart C—Procedures for Making Grants to States

**§ 303.50 Formula for State allocations.**

(a) For each fiscal year, from the aggregate amount of funds available under this part for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(b) For the purposes of allotting funds to the States under paragraph (a) of this section—

(1) "Aggregate amount" means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under § 303.53 and to the jurisdictions under § 303.54; and

(2) "State" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1484(c))

**§ 303.51 Distribution of allotments from non-participating States.**

If a State elects not to receive its allotment, the Secretary may allot those funds among the remaining States in accordance with § 303.50(a).

(Authority: 20 U.S.C. 1484(d))

**§ 303.52 Minimum grant that a State may receive.**

No State receives less than 0.5 percent of the aggregate amount available under § 303.50.

(Authority: 20 U.S.C. 1484(c)(1))

**§ 303.53 Payments to the Secretary of the Interior.**

(a) The Secretary is authorized to make payments to the Secretary of the Interior according to the need for assistance for the provision of early intervention services to children with handicaps and their families on reservations served by the elementary and secondary schools operated for Indians by the Department of the Interior.

(b) The amount of payment under paragraph (a) of this section for any fiscal year is 1.25 percent of the aggregate amount available to States after the Secretary determines the amount of payments to be made to the jurisdictions under § 303.54.

(Authority: 20 U.S.C. 1484(b))

**§ 303.54 Payments to the jurisdictions.**

From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to 1 percent for payments to the jurisdictions listed in § 303.2 in accordance with their respective needs.

(Authority: 20 U.S.C. 1484(a))

## Subpart D—Minimum Components of a Statewide System of Early Intervention Services

### General Components

**§ 303.60 State definition of developmental delay.**

Each State's policies must include the definition of the term "developmental delay" that will be used by the State in carrying out programs under this part. The States's definition must include the five developmental areas listed in § 303.13(a).

(Authority: 20 U.S.C. 1476(b)(1))

**§303.61 Central directory.**

(a) Each system must have a central directory, that includes information about—

(1) Early intervention services, resources, and experts available in the State; and

(2) Research and demonstration projects being conducted in the State.

(b) The central directory must be—

(1) Updated at least annually, and

(2) Easily accessible to the public.

(Authority: 20 U.S.C. 1476(b)(7))

**Note:** To the extent appropriate, the directory should include available parent support groups and advocate associations.

**§ 303.62 Timetables for serving all eligible children.**

Each system must include timetables for ensuring that appropriate early intervention services will be available to all infants and toddlers with handicaps by the beginning of the fifth year of the State's participation under this part.

(Authority: 20 U.S.C. 1476(b)(2))

### Identification and Evaluation

**§ 303.63 Public awareness program.**

Each system must include a public awareness program that focuses on early identification services for infants and toddlers with handicaps. The program must—

(a) Be a continuous, on-going program that is in effect throughout the State; and

(b) Provide for the involvement of, and communication with, major organizations throughout the State that have a direct interest in this part, including public agencies at the State and local level, private providers, parent groups, advocate associations, and other organizations.

(Authority: 20 U.S.C. 1476(b)(6))

**§ 303.64 Comprehensive child find system.**

(a) Each system must include a comprehensive child find system that meets the requirements of paragraphs (b) through (d) of this section.

(b) The child find system must—

(1) Be consistent with the State's child identification, location, and evaluation procedures required under Part B of the Act (see 34 CFR 300.128);

(2) Be coordinated with all other major child find efforts conducted by various public and private agencies throughout the State; and

(3) Include procedures for making referrals by primary referral sources to the child find system and to service providers.

(c) The procedures in paragraph (b)(3) of this section must include—

(1) Reasonable timelines; and

(2) Provide for participation by primary referral sources, including hospitals and postnatal care facilities, physicians, parents, other health care providers, public health facilities, and day care programs.

(Authority: 20 U.S.C. 1476(b)(5))

**Note 1:** Coordination with other child find efforts in the State helps to maximize the State's resources, by eliminating duplication of effort and ensuring that all eligible children are identified. To ensure appropriate coverage, a State may wish to establish a central registry.

**Note 2:** A State should establish reasonable timelines (e.g., 30 calendar days) for staff in the child find system to act on a referral (e.g., (1) in determining a child's eligibility after referral to the child find system, and (2) in referring the child to a service provider after the need for early intervention services has been determined). This will help to ensure that delays in identification, evaluation, and the provision of services are minimal.

**§ 303.65 Evaluation and assessment.**

(a) Each system must include the performance of a timely, comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation. The evaluation must meet the requirements of paragraphs (b) through (d) of this section.

(b) The evaluation required by paragraph (a) of this section must include the following:

(1) For each child—

(i) An evaluation of the child's level of functioning in all five areas listed in § 303.13(a);

(ii) An assessment of the unique needs of the child; and

(iii) The identification of services appropriate to meet those needs.

(2) For the family of each child, an assessment of the family's strengths and needs relating to enhancing the development of the child.

(c) To the extent appropriate, the assessment of families in paragraph (b)(2) of this section must be based on information provided by the families through personal interviews or written statements.

(d) The evaluation and assessment of each child and the child's family must be completed within 30 calendar days after referral.

(Authority: 20 U.S.C. 1476(b)(3), 1477(a)(1), (d)(2), (d)(3))

**Note:** Section 303.65 combines into one overall requirement the provisions on evaluation and assessment under the following sections of the Act: Section 676(b)(3) (timely, comprehensive, multidisciplinary evaluation), and section 677(a)(1) (multidisciplinary assessment). It also requires that the evaluation-assessment process be broad enough to include information required in the IFSP concerning (1) The family's strengths (section 677(d)(2)), and (2) the child's functioning level in self-help skills and in physical, cognitive, speech-language, and psychosocial development (section 676(d)(1)).

The evaluation-assessment requirement in § 303.65 may be completed as a one or two step process, depending upon State practice. However, the State: (1) Must ensure that the process is completed before writing the IFSP, and (2) should provide for appropriate participation by the families of the infants and toddlers.

### Individualized Family Service Plan

**§ 303.66 Meeting the IFSP requirements.**

(a) *General.* Each system must include procedures that meet the requirements of this section and §§ 303.67–303.70.

(b) *Requirements for the third year.* Except as provided in § 303.40, the procedures required in paragraph (a) of this section must be included in a State's third year application under this part.

(c) *Fourth year requirements.* By the beginning of the fourth year of a State's participation under this part, the State shall ensure that the following are met:

(1) The evaluation and assessment requirement in § 303.65 is implemented.

(2) An IFSP is developed for each child determined to be eligible under this part. The IFSP must—

(i) Be developed by an interdisciplinary team, including the parents;

(ii) Be based on the results of the evaluation in § 303.65; and

(iii) Be developed within a reasonable time after the multidisciplinary evaluation is completed.

(3) Case management services are available to the family of each child.

(d) *Requirements for the fifth and suceeding years.* By the beginning of the fifth year of a State's participation, an IFSP must be developed and implemented for each child who is eligible for early intervention services.

(Authority: 20 U.S.C. 1476(b)(4), 1477(a)(2), (c))

**Note:** Development of the IFSP is essentially the final step in the evaluation-assessment process. Therefore, it is expected that the IFSP for a child who has been evaluated under § 303.65 would be developed as soon as possible after the evaluation is completed (e.g., by the end of the 30-day timeline in § 303.65(d), or within a few days of that timeline).

**§ 303.67 Provision of services before assessment is completed.**

With parental consent, early intervention services may commence before the completion of the evaluation in § 303.65. However, within 30 calendar days of the initiation of those services, the evaluation must be completed and the IFSP must be developed.

(Authority: 20 U.S.C. 1477(c))

**Note:** The report of the House of Representatives on Pub. L. 99-457 includes the following statement regarding the provision of services before completing the evaluation of an infant or toddler:

The authority to allow early intervention services to commence prior to completion of assessment should be the exception and not the rule. Further this authority should not be used as a means for systematically circumventing the obligation to complete the assessment and develop the plan within a reasonable time.

(House Report No. 99-860, 9 (1986).)

**§ 303.68 Review and evaluation of IFSP.**

(a) *Periodic review.* Each child's IFSP must be evaluated once a year, and the family must be provided a review of the IFSP at 6-month intervals (or more often, if appropriate, based on the child's or family's needs).

(b) *Family participation.* The review and evaluation of each child's IFSP must provide for the participation of the child's family.

(Authority: 20 U.S.C. 1477(a)(2), (b))

**§ 303.69 Content of IFSP.**

The IFSP for each child must be in writing, and contain—

(a) A statement of the child's present levels of physical development, cognitive development, language and speech development, psychosocial development, and self-help skills, based on acceptable objective criteria;

(b) A statement of the family's strengths and needs relating to enhancing the development of the child;

(c) A statement of the major outcomes expected to be achieved for the child and the family, including the criteria, procedures, and timelines that will be used to determine—

(1) The degree to which progress toward achieving the outcomes is being made; and

(2) Whether modifications or revisions of the outcomes or services are necessary;

(d) A statement of the specific early intervention services necessary to meet the unique needs of the child and the family, including the frequency, intensity, and method of delivering services;

(e) The projected dates for initiation of services and the anticipated duration of those services;

(f) The name of the case manager from the profession most immediately relevant to the child's or family's needs, who will be responsible for the implementation of the IFSP and coordination with other agencies and persons; and

(g) The steps to be taken supporting the transition of the child to services provided under Part B of the Act, to the extent that those services are considered appropriate.

(Authority: 20 U.S.C. 1477(d))

**§ 303.70 Responsibility and accountability.**

Each agency or person who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, Part H of the Act does not require that any agency or person be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.

(20 U.S.C. 1477; House Rpt No. 99-860, 13 (1986).)

**Personnel Training and Standards**

**§ 303.71 Comprehensive system of personnel development.**

(a) Each system must include a comprehensive system of personnel development. Subject to paragraph (b) of this section, a State's current personnel development system required under Part B of the Act (See 34 CFR § 300.380-300.387) may be used to satisfy this requirement.

(b) The personnel development system under this part must—

(1) Provide for preservice and inservice training to be conducted on an interdisciplinary basis, to the extent appropriate; and

(2) Provide for the training of a variety of personnel needed to meet the requirements of this part, including public and private providers, primary referral sources, parents, paraprofessionals, and persons who will serve as case managers.

(Authority: 20 U.S.C. 1476(b)(8))

**§ 303.72 Standards for personnel who provide services to infants and toddlers with handicaps.**

(a) *General requirement.* (1) Each system must include policies and procedures for establishing and maintaining standards to ensure that personnel necessary to provide early intervention services under this part are appropriately and adequately prepared and trained.

(2) The standards required by paragraph (a)(1) of this section must be consistent with any State approved or recognized certification, licensing, or other comparable requirements that apply to the profession or discipline in which personnel are providing early intervention services.

(b) *Information.* Each system must include a list that—

(1) Shows each profession or discipline in which personnel are providing early intervention services; and

(2) Indicates, for each profession or discipline, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(c) *Steps; timelines.* For each area of early intervention services in which the existing State standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the system must include—

(1) The steps the State is taking to require the retraining or hiring of personnel that meet the highest requirements in the State, and the timelines for accomplishing those steps; or

(2)(i) An alternative personnel standard that the State determines is appropriate;

(ii) A statement explaining the State's determination that this standard is appropriate;

(iii) The steps, if necessary, the State is taking to require the retraining or hiring of personnel that meet the State's alternative appropriate standards; and

(iv) The timelines for accomplishing those steps.

(d) *Highest requirements—all State agencies.* In identifying the "highest requirements in the State" for purposes of this section, the requirements of all State agencies, not only the State educational agency, must be considered.

(Authority: 20 U.S.C. 1476(b)(13))

Note: Identifying the "highest requirements in the State" means, for example, that if standards for physical therapists are issued by both the State educational agency (SEA) and a State licensing board, the standards of the SEA and the licensing board must be compared to identify the "highest requirements in the State."

## Procedural Safeguards

### § 303.73 General.

Each system must include procedural safeguards that meet the requirements in §§ 303.74–303.82. A State may meet those requirements by—

(a) Adopting the full set of procedural safeguards in the regulations implementing Part B of the Act (See 34 CFR 300.500–300.514 and 300.560–300.576);

(b) Adopting selected parts of the procedural safeguards under Part B, and developing procedures to meet the remaining safeguards under §§ 303.74–303.79; or

(c) Developing procedures that meet all of the requirements under §§ 303.74–303.82.

(Authority: 20 U.S.C. 1480, House Rpt. No. 99–860, 14 (1986).)

### § 303.74 Opportunity to examine records.

The parents of a child covered under this part must be afforded the opportunity to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the IFSP.

(Authority: 20 U.S.C. 1480(3))

### § 303.75 Prior notice; native language.

(a) Written prior notice must be given to the parents of each child covered under this part a reasonable time before the State agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child.

(b) The notice must—

(1) Be in sufficient detail to fully inform the parents about—

(i) The action that is being proposed or refused;

(ii) The reasons for taking the action; and

(iii) All procedural safeguards that are available under this part;

(2) Be written in language understandable to the general public; and

(3) Be provided in the native language of the parents, unless it is clearly not feasible to do so.

(Authority: 20 U.S.C. 1480(5), (6))

### § 303.76 Administrative complaint procedures.

Each system must include procedures for the timely administrative resolution of individual child complaints by parents concerning any of the matters listed in § 303.75(a). The procedures must meet the requirements in §§ 303.77–303.82.

(Authority: 20 U.S.C. 1480(1))

Note: Regarding the timely resolution of complaints by parents. The Report of the House of Representatives on Pub. L. 99–457 states:

It is also the Committee's intent that the procedures developed by the State result in speedy resolution of complaints because an infant's development is rapid and therefore undue delay could be potentially harmful. Thus, it would be acceptable for the impartial individual to attempt to mediate the complaint. However, if such an attempt is unsuccessful, it would be expected that the record be retained and that the decision be in writing to allow a parent, who is so inclined, to appeal to the courts.

(House Report No. 99–860, 14 (1986).)

### § 303.77 Appointment of an impartial person.

(a) *Qualifications and duties.* An impartial person must be appointed to implement the complaint resolution process. The person must—

(1) Have knowledge about the provisions of this part, and the needs of, and services available for, infants and toddlers with handicaps; and

(2) Perform the following duties:

(i) Listen to presentations of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint; and

(ii) Provide a record of the proceedings, including a written decision.

(b) *Definition of impartial.* (1) As used in this section, "impartial" means that the person appointed to implement the complaint resolution process—

(i) Is not an employee of any agency involved in providing early intervention services to the child involved in the complaint; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies to conduct a hearing under paragraph (b)(1) of this section is not an employee of an agency solely because he or she is paid by the agency to implement the complaint resolution process.

(Authority: 20 U.S.C. 1480(1))

### § 303.78 Convenience of proceedings; timelines.

(a) The administrative proceedings required under this part must be carried out at a time and place that is reasonably convenient to the parents.

(b) The State shall ensure that not later than 30 calendar days after receipt of a parent's complaint the administrative proceedings will be completed and a written decision mailed to each of the parties.

(Authority: 20 U.S.C. 1480(1))

### § 303.79 Civil action.

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under section 680(1) of the Act.

(Authority: 20 U.S.C. 1480(1), House Report No. 99–860, 14 (1986))

### § 303.80 Status of child during proceedings.

(a) During the pendency of any proceeding or action involving a complaint, unless the State agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

(Authority: 20 U.S.C. 1480(7))

### § 303.81 Surrogate parents.

Each system must include procedures to protect the rights of a child covered under this part whenever the parents of the child are not known or unavailable, or the child is a ward of the State. The procedures must provide for the assignment of an individual to act as a surrogate for the parents. The person selected to serve as a surrogate parent may not be an employee of a State agency providing services to the child.

(Authority: 20 U.S.C. 1480(4))

### § 303.82 Confidentiality of information.

Each State shall adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part.

(Authority: 20 U.S.C. 1480(2))

## State Administration

### § 303.83 Lead agency.

(a) *General.* Each Statewide system must include a single line of responsibility in a lead agency that—

(1) Is established or designated by the Governor; and

(2) Is responsible for the administration of the system.

(b) *Administrative duties.* The lead agency is responsible for carrying out the following duties:

(1) General administration, supervision, and monitoring of programs and activities receiving assistance under this part, to ensure compliance with the provisions of this part.

(2) Identification and coordination of all available resources within the State from Federal, State, local, and private sources.

(3) Assignment of financial responsibility to the appropriate agency.

(4) Entry into formal interagency agreements that (consistent with State law)—

(i) Define the financial responsibility of each agency for paying for early intervention services;

(ii) Include procedures for resolving disputes; and

(iii) Include all additional components necessary to ensure meaningful cooperation and coordination.

(5) Development of procedures to ensure that services are provided to infants and toddlers with handicaps and their families in a timely manner, pending the resolution of disputes among public agencies or service providers.

(6) Resolution of intra-agency and interagency disputes.

(Authority: 20 U.S.C. 1476(b)(9))

**Note:** The Report of the House of Representatives on Pub. L. 99-457 states the following regarding the single line of responsibility in a lead agency:

Without this critical requirement, there is an abdication of responsibility for the provision of early intervention services for handicapped infants and toddlers. Although the bill recognizes the importance of interagency responsibility for providing or paying for appropriate services, it is essential that ultimate responsibility remain in a lead agency so that buckpassing among State agencies does not occur to the detriment of the handicapped infant or toddler.

(House Report No. 99-860, 14 (1986))

**§ 303.84 Policy for arranging for services.**

Each system must include a policy pertaining to contracting or making other arrangements with service providers to provide early intervention services, consistent with the provisions of this part. The policy must set out the conditions that the lead agency expects to be met by a service provider, including—

(a) The contents of the application to be used, if the lead agency elects to have providers apply for funds;

(b) The conditions of the contract to be used, if services are to be provided on a contract basis; or

(c) The requirements to be met, if other arrangements are used.

(Authority: 20 U.S.C. 1476(b)(10))

**§ 303.85 Timely reimbursement; nonsubstitution.**

(a) *Reimbursement procedure.* Each system must include a procedure for securing the timely reimbursement of funds used under this part, in accordance with paragraph (b) of this section.

(b) *Nonsubstitution of funds.* Funds provided under this part may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source but for the enactment of Part H of the Act. However, if it is considered necessary to prevent a delay in the timely provision of services to an eligible child or family, funds under this part may be used to pay the provider of services, pending reimbursement from the agency which has ultimate responsibility for the payment.

(c) *Non-reduction of other benefits.* Nothing in this part may be construed to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act (relating to maternal and child health) or Title XIX of the Social Security Act (relating to Medicaid for infants and toddlers) within the State.

(Authority: 20 U.S.C. 1476(b)(11), 1481)

**§ 303.86 Data collection.**

(a) *General.* Each system must include the procedures that the State uses to compile descriptive data on the statewide system. The procedures must meet the requirements of paragraphs (b) and (c) of this section.

(b) *Process for collecting data.* The procedures must include a process for—

(1) Collecting data from various agencies and service providers in the State;

(2) Making use of appropriate sampling methods if sampling is permitted; and

(3) Describing the sampling methods used if reporting to the Secretary.

(c) *Kinds of data to be reported.* The procedures must provide for reporting the following kinds of data:

(1) The numbers of eligible children and their families in the State who are in need of early intervention services (which may be based on a sampling of data).

(2) The numbers of eligible children and their families who are served.

(3) The types of services provided (which may be based on a sampling of data).

(4) Other information required by the Secretary, including information required under section 618 of the Act.

(Authority: 20 U.S.C. 1476(b)(14))

## Subpart E—State Interagency Coordinating Council

**§ 303.90 Establishment of Council.**

(a) A State that desires to receive financial assistance under this part shall establish a State Interagency Coordinating Council composed of 15 members.

(b) The Council and the chairperson of the Council must be appointed by the Governor. The Governor shall ensure that the membership of the Council reasonably represents the population of the State.

(Authority: 20 U.S.C. 1482(a))

**§ 303.91 Composition.**

The Council must be composed of the following:

(a) At least—

(1) Three members who are parents of infants and toddlers with handicaps or of handicapped children aged three through six;

(2) Three public or private providers of early intervention services;

(3) One representative from the State legislature; and

(4) One person in personnel preparation.

(b) Other members representing each of the appropriate agencies involved in the provision of or payment for early intervention services to eligible children under this part, and others selected by the Governor.

(Authority: 20 U.S.C. 1482(b))

**Note:** The Council should include a representative of the State educational agency who is responsible for, or knowledgeable about, the Pre-school Grants program under section 619 of the Act (34 CFR Part 301). Inclusion of such a person will help to ensure the smooth transition of any infants or toddlers who will require special education and related services under that program.

**§ 303.92 Meetings.**

The Council must meet at least quarterly and in such places as it deems necessary. The meetings must be publicly announced, and, to the extent appropriate, be open and accessible to the general public.

(Authority: 20 U.S.C. 1482(c))

**§ 303.93 Functions of Council.**

The Council must—

(a) Advise and assist the lead agency in the performance of its administrative duties in § 303.83(b), particularly in the—

(1) Identification of the sources of fiscal and other support for services for early intervention programs;

(2) Assignment of financial responsibility to the appropriate agency; and

(3) Promotion of the interagency agreements;

(b) Advise and assist the lead agency in the preparation of annual applications under this part, and amendments to those applications; and

(c) Prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs operated within the State for infants and toddlers with handicaps and their families.

(Authority: 20 U.S.C. 1482(e))

**§ 303.94 Conflict of interest.**

No member of the Council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.

(Authority: 20 U.S.C. 1482(f))

**§ 303.95 Use of existing councils.**

If a State established a Council before September 1, 1986, that is comparable to the requirements for a Council in §§ 303.90–303.94, that Council is considered to be in compliance with those requirements. However, within four years after the date that a State accepts funds under this part, the State shall establish a Council that complies in full with §§ 303.90–303.94.

(Authority: 20 U.S.C. 1482(g))

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Part IX

# Department of Education

**Office of Special Education and Rehabilitative Services**

**34 CFR Part 361**

**The State Vocational Rehabilitation Services Program; Notice of Proposed Rulemaking**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

### 34 CFR Part 361

### The State Vocational Rehabilitation Services Program

**AGENCY:** Office of Special Education and Rehabilitative Services, Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing the State Vocational Rehabilitation Services Program. These amendments are needed to implement certain changes in Title I of the Rehabilitation Act of 1973, made by the Rehabilitation Act Amendments of 1986. The proposed regulations would include revisions to existing State plan requirements, add new State plan requirements, and reflect changes in the fiscal administration of this program. In addition, the regulations include new or revised definitions, implement new requirements for client appeal procedures, and expand the services to be provided to individuals with handicaps.

**DATE:** Comments must be received on or before January 4, 1988.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Justin W. Dart, Jr., Commissioner, Rehabilitation Services Administration, Mary E. Switzer Building, Room 3028, Mail Stop 2312, 330 C Street SW., Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Mark E. Shoob, Acting Associate Commissioner, Office of Program Operations, Rehabilitation Services Administration, Room 3211, Mail Stop 2312, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202. Telephone (202) 732-1415 or TTY (202) 732-2848.

**SUPPLEMENTARY INFORMATION:** The Rehabilitation Act Amendments of 1986 made major changes to certain requirements governing the operation and administration of the Title I Vocational Rehabilitation Services Program. These major changes include:

#### Rehabilitation Engineering Services

The amendments emphasize the increased use of rehabilitation engineering services by State vocational rehabilitation agencies. The statute now contains a definition of rehabilitation engineering services; rehabilitation engineering services have been added to the list of services in section 103 of the Act that each State must provide, if appropriate, to individuals it serves; the State plan must contain a description of how rehabilitation engineering services will be furnished to an increasing number of individuals; and an evaluation of an applicant's rehabilitation potential must include, if appropriate, an evaluation by personnel skilled in rehabilitation engineering technology. The proposed regulations incorporate these changes in §§ 361.1(c)(2), 361.42(a)(15), 361.2(b)(1), and 361.32(c).

#### Employability

The amendments expand the statutory definition of employability to include supported employment and part-time employment as acceptable vocational outcomes. The proposed regulations implement this change in § 361.1(c)(2).

#### Post-Employment Services

The amendments clarify that post-employment services are to be provided to enable an individual to regain as well as maintain suitable employment. This clarification is implemented in proposed § 361.42(a)(13). The amendments also add to the mandatory components of an individualized written rehabilitation program a requirement that States assess the need for post-employment services throughout the rehabilitation process. This requirement is reflected in proposed § 361.41(a)(4), (7), and (13).

#### Amended and New State Plan Requirements

The amendments strengthen the order of selection and "last dollar" requirements of the Title I program. States that cannot serve all eligible individuals must now submit in their State plans a justification for the specific order they will follow in providing services. This amendment is incorporated in proposed § 361.36(a). The requirement that States consider the availability of similar benefits under other programs before providing most services has been replaced by a stronger provision requiring a determination of the availability of comparable services and benefits prior to providing services. The amendments permit an exception from this requirement if delay for that determination will cause an individual with handicaps to be at extreme medical risk. The proposed regulations in § 361.1(c)(2) define "extreme medical risk" to mean a risk of substantial functional impairment or death.

The amendments also add a number of new State plan requirements. States are now required to describe their plans, policies, and methods to facilitate the transition from education to employment-related activities; to submit an acceptable plan for supported employment services under Title VI, Part C as a supplement to the Title I plan; and, with respect to development of the State plan, to consult, as appropriate, with Indian tribes, tribal organizations, and native Hawaiian organizations and hold State-wide public meetings. These new requirements are implemented in proposed §§ 361.2(b)(1)(iii) and (b)(2)(vi) and 361.18.

#### Appeal Procedures

The amendments revise the requirements in section 102(d) of the Act for State appeal procedures if applicants or recipients request a review of State determinations regarding the furnishing or denial of services. Except for States that use a fair hearing board established for this purpose before January 1, 1985, the amendments require that States establish appeal procedures that provide for an initial decision by an impartial hearing officer and reviewing authority of any initial decision by the director of the State program. The amendments also repeal the authority of the Secretary to review final State decisions. The proposed regulations in § 361.48 would remove current regulatory requirements that States adhere to a two-tier appeal process of providing first an administrative review and then a fair hearing. The proposed regulations would also establish specific timelines for action by an impartial hearing officer and the director of the State program that are similar to regulatory requirements under the State special education program. The proposed regulations in § 361.1(c)(2) define who qualifies as an impartial hearing officer.

#### Supported Employment

The amendments add a definition of "supported employment" to the Act and authorize supported employment as an acceptable vocational outcome under the Title I program. In order to ensure consistency in the provision of supported employment services under the Title I program and the new State Supported Employment Services program under Title VI, Part C (final regulations for this program in 34 CFR Part 363 where published in the **Federal Register** on August 14, 1987 at 52 FR 30546), the proposed regulations incorporate in § 361.1(c)(2) definitions of

terms used in the statutory definition of "supported employment" that are defined in Part 363. These terms are: "competitive work"; "integrated work setting"; "on-going support services"; and "transitional employment for individuals with chronic mental illness". The proposed regulations also add to the requirements for an individualized written rehabilitation program (IWRP) in § 361.41(b) additional requirements for supported employment clients: The IWRP must describe the time-limited services, not to exceed 18 months in duration, to be provided by the State unit and the extended services that are needed by the individual; must identify the other State, Federal, or private programs that will provide continuing support; and must contain a justification for the State's determination that continuing support is available. The proposed regulations do not adopt other Part 363 requirements, including mandatory use of collaborative agreements that meet the specifications of § 363.50. State agencies may elect, of course, to follow these requirements in the Title I program, too.

**Fiscal Provisions**

The proposed regulations also implement certain statutory changes in the fiscal provisions of the Title I program. Section 361.87(b) permits States to carry over reallotted funds to a subsequent fiscal year for use in paying initial expenditures in the subsequent fiscal year. The proposed regulations define "initial expenditure". Section 361.86(a) reflects the incremental reduction in the Federal share of program expenditures for payments to States in excess of the fiscal 1988 amount. Section 361.86(b) implements a change in the State maintenance of effort requirement, which is now based on an average of State expenditures for the three preceding fiscal years. The amendments also permit a waiver or modification of a State's maintenance of effort requirement if a State can establish that exceptional or uncontrollable circumstances prevent it from complying. The proposed regulations include examples of exceptional or uncontrollable circumstances such as a major natural disaster or a serious economic downturn that cause a general reduction of State programs.

**Proposed Burden Reduction and Other Deregulation**

The Secretary intends to publish later this fiscal year a separate notice of proposed rulemaking for the State Vocational Rehabilitation Services Program to reduce regulatory burden (including reconsideration of burden that may be imposed by final regulations arising from this NPRM) and to clarify certain other regulatory provisions that are not related to implementing the 1986 amendments. This review is scheduled to begin in January 1988. The Secretary specifically invites comments on this burden reduction issue in response to this NPRM.

*Executive Order 12291*

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

*Regulatory Flexibility Act Certification*

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Because these proposed regulations would affect only States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

*Paperwork Reduction Act of 1980*

Sections 361.2, 361.17, 361.18, 361.36, 361.39, 361.40, 361.41, and 361.48 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Eduction will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

*Intergovernmental Review*

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3211, Mary E. Switzer, Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

**List of Subjects in 34 CFR Part 361**

Administrative practice and procedure, Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Social security, Supplemental Security Income, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number 84.126, State Vocational Rehabilitation Services Program)

Dated: September 30, 1987.

**William J. Bennett,**

*Secretary of Education.*

The Secretary proposes to amend Part 361 of Title 34 of the Code of Federal Regulations as follows:

## PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

1. The authority citation for Part 361 is revised to read as follows:

**Authority:** 29 U.S.C. 711(c), unless otherwise noted.

2. In the table of contents and section headings for Part 361, remove the words "handicapped individuals" and add, in their place, the words "individuals with handicaps" in the following places:

(a) Section 361.15;

(b) Section 361.53; and

(c) Section 361.75.

3. In the table of contents and section headings for Part 361, remove the words "severely handicapped individuals" and add, in their place, the words "individuals with severe handicaps" in the following places:

(a) Section 361.50; and

(b) Section 361.72.

4. In Part 361, remove the words "handicapped individuals" and add, in their place, the words "individuals with handicaps" in the following places:
(a) Section 361.1(c)(2), definition of "Designated State unit", paragraph (i);
(b) Section 361.5(b)(1);
(c) Section 361.6(b)(1);
(d) Section 361.9(a)(5);
(e) Section 361.11(a);
(f) Section 361.12(a);
(g) Section 361.15(b);
(h) Section 361.19(a) and (d);
(i) Section 361.22;
(j) Section 361.36(c);
(k) Section 361.37;
(l) Section 361.42(a)(6);
(m) Section 361.47(a)(2);
(n) Section 361.51(c) and (e);
(o) Section 361.52(c) and (g);
(p) Section 361.54;
(q) Section 361.55;
(r) Section 361.57;
(s) Section 361.58;
(t) Section 361.71(a) and (c);
(u) Section 361.75;
(v) Section 361.150(b); and
(w) Section 361.151(c) and (h).

5. In Part 361, remove the words "handicapped individual" and add, in their place, the words "individual with handicaps" in the following places:
(a) Section 361.1(c)(2), definitions of "Family member" following the phase "with whom the"; and "Vocational rehabilitation services" when provided for the benefit of groups of individuals, paragraph (iv);
(b) Section 361.13(a)(3);
(c) Section 361.31(a)(1);
(d) Section 361.39(f)(h), and (j);
(e) Section 361.40(d), the first time it appears;
(f) Section 361.42(a)(7);
(g) Section 361.53;
(h) Section 361.71(c); and
(i) Section 361.75.

6. In Part 361, remove the words "a handicapped individual" and add, in their place, the words "an individual with handicaps" in the following places:
(a) Section 361.1(c)(2), definition of "Family member;"
(b) Section 361.34(b);
(c) Section 361.35(a);
(d) Section 361.40(d);
(e) Section 361.47(a); and
(f) Section 361.71(a).

7. In Part 361, remove the words "severely handicapped individuals" and add, in their place, the words, "individuals with severe handicaps" in the following places:
(a) Section 361.1(c)(2), definition of "Vocational rehabilitation services" when provided for the benefit of groups of individuals, paragraph (i);
(b) Section 361.14(a);
(c) Section 361.50(a) and (b)(5);
(d) Section 361.72(a); and
(e) Section 361.155.

8. In Part 361, remove the words "his or her" and add, in their place, the words "the individual's" in the following places:
(a) Section 361.40(d)(1) and (d)(3); and
(b) Section 361.71(a).

9. In § 361.1, paragraph (b)(1) and (c)(2) introductory text are revised and the definitions in paragraph (c)(2) are amended by adding definitions of "Competitive work," "Extreme medical risk," "Impartial hearing officer," "Indian tribe," two definitions of "Individual with handicaps," Individual with severe handicaps," Initial expenditure," "Integrated work setting," "On-going support services," "Rehabilitation engineering," "Supported employment," and "Transitional employment for individuals with chronic mental illness" in alphabetical order; removing the definitions of "Secretary," both definitions of "Handicapped individual," and "Severely handicapped individual;" and revising the definitions of "Employability," "Evaluation of vocational rehabilitation potential," paragraphs (iii) and (v), "Local agency," "Rehabilitation facility," introductory text and paragraphs (vi) and (xi)–(xiv), and "Substantial handicap to employment," to read as follows:

**§ 361.1 The State vocational rehabilitation services program.**

* * * * *

(b) * * *

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board) except for hearings under Subpart G of Part 361, and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

* * * * *

(c) * * *

(2) The following definitions also apply to this Part 361:

* * * * * *

*"Competitive work,"* as used in the definition of "Supported employment," means work that is performed on a full-time basis or on a part-time basis, averaging at least 20 hours per week for each pay period, and for which an individual is compensated in accordance with the Fair Labor Standards Act.

(Authority: Secs. 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c))

* * * * * *

*"Employabillty"* means a determination that, with the provision of vocational rehabilitation services, the individual is likely to enter or retain, as a primary objective, full-time employment, or if appropriate, part-time employment, consistent with the capacities or abilities of the individual in the competitive labor market; the practice of a profession; self-employment; homemaking; farm or family work (including work for which payment is in kind rather than in cash); sheltered employment; homebased employment; supported employment; or other gainful work.

(Authority: Sec. 7(6) of the Act; 29 U.S.C. 706(6))

* * * * * *

*"Evaluation of vocational rehabilitation potential"* * * *

* * * * * *

(iii) Any other goods or services, including rehabilitation engineering services, necessary to determine the nature of the handicap and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services in terms of employability;

* * * * * *

(v) The provision of vocational rehabilitation services to an individual during an extended evaluation of rehabilitation potential for the purpose of determining whether the individual is an individual with handicaps for whom a voctional goal is feasible.

(Authority: Sec. 7(5) of the Act; 29 U.S.C. 706(5))

"Extreme medical risk" means a risk of substantial functional impairment of death.

(Authority: Sec. 101(a)(8) of the Act; 29 U.S.C. 721(a)(8))

* * * * * *

*"Impartial hearing officer"* means an individual—

(i) Who is not an employee of a public agency that is involved in any decision regarding the furnishing or denial of rehabilitation services to a vocational rehabilitation applicant or recipient. An individual is not an employee of a public agency solely because the individual is paid by that agency to serve as a hearing officer;

(ii) Who has not been involved in previous decisions regarding the vocational rehabilitation applicant or recipient;

(iii) Who has background and experience in, and knowledge of, the delivery of vocational rehabilitation services; and

(iv) Who has no financial interest in the outcome of the hearing.

(Authority: Sec. 102(d) of the Act; 29 U.S.C. 722(d))

*"Indian tribe"* means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).

(Authority: Sec. 7(21) of the Act; 29 U.S.C. 706(21))

*"Individual with handicaps,"* except in §§ 361.15(b), 361.51(e), and 361.52(g) means an individual—

(i) Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(ii) Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an extended evaluation of vocational rehabilitation potential is necessary to determine whether the individual might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services.

(Authority: Sec. 7(8)(A) of the Act; 29 U.S.C. 706(8)(A))

*"Individual with handicaps,"* for purposes of §§ 361.15(b), 361.51(e), and 361.52(g), means an individual—

(i) Who has a physical or mental impairment which substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Authority: Sec. 7(8)(B) of the Act; 29 U.S.C. 706(8)(B))

*"Individual with severe handicaps"* means an individual with handicaps—

(i) Who has a severe physical or mental disability that seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, inter-personal skills, work tolerance, or work skills) in terms of employability;

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

(Authority: Sec. 7(15) of the Act; 29 U.S.C. 708(15))

*"Initial expenditure,"* as applied to the use of reallotted funds, means the first cash outlay of the fiscal year subsequent to the fiscal year from which the funds were reallotted.

(Authority: Sec. 110(c)(2) of the Act; 29 U.S.C. 730(c)(2))

*"Integrated work setting,"* as used in the definition of "Supported employment," means job sites where—

(i)(A) Most co-workers are not handicapped; and

(B) Individuals with handicaps are not part of a work group of other individuals with handicaps; or

(ii)(A) Most co-workers are not handicapped; and

(B) If a job site described in paragraph (i)(B) of this definition is not possible, individuals with handicaps are part of a small work group of not more than eight individuals with handicaps; or

(iii) If there are no co-workers or the only co-workers are members of a small work group of not more than eight individuals, all of whom have handicaps, individuals with handicaps have regular contact with non-handicapped individuals, other than personnel providing support services, in the immediate work setting.

(Authority: Secs. 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c))

*"Local agency"* means an agency of a unit of general local government or of an Indian tribe (or combination of those units or tribes) that has the sole responsibility under an agreement with the State agency to conduct a vocational rehabilitation program in the locality under the supervision of the State agency in accordance with the State plan.

(Authority: Sec. 7(9) of the Act; 29 U.S.C. 706(9))

*"On-going support services,"* as used in the definition of "Supported employment," means continuous or periodic job skill training services provided at least twice monthly at the work site throughout the term of employment to enable the individual to perform the work. The term also includes other support services provided at or away from the work site, such as transportation, personal care services, and counseling to family members, if skill training services are also needed by, and provided to, that individual at the work site.

(Authority: Secs. 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c))

* * * * *

*"Rehabilitation engineering"* means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with handicaps in areas that include education, rehabilitation, employment, transportation, independent living, and recreation.

(Authority: Sec. 7(12) of the Act; 29 U.S.C. 706(12))

*"Rehabilitation facility"* means a facility that is operated for the primary purpose of providing vocational rehabilitation services to individuals with handicaps and that provides singly or in combination one or more of the following services to individuals with handicaps:

* * * * *

(vi) Psychiatric, psychological and social services;

* * * * *

(xi) Orientation and mobility services and other adjustment services to blind individuals;

(xii) Transitional or extended employment for those individuals with handicaps who cannot be readily absorbed in the competitive labor market;

(xiii) Psychosocial rehabilitation services for individuals with chronic mental illness; and

(xiv) Rehabilitation engineering services.

(Authority: Sec. 7(13) of the Act; 29 U.S.C. 706(13))

*"Substantial handicap to employment"* means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance, by preventing the obtaining, retaining, or preparing for employment consistent with the individual's capacities and abilities.

(Authority: Secs. 7(7)(A)(i) and 12(c) of the Act: 29 U.S.C. 706(7)(A)(i) and 711(c))

*"Supported employment"* means—

(i) Competitive work in an integrated work setting with on-going support services for individuals with severe handicaps for whom competitive employment—

(A) Has not traditionally occurred; or

(B) Has been interrupted or intermittent as a result of severe handicaps; or

(ii) Transitional employment for individuals with chronic mental illness.

*"Transitional employment for individuals with chronic mental illness,"* as used in the definition of "Supported employment," means competitive work in an integrated work setting for individuals with chronic mental illness who may need support services (but not necessarily job skills training services) provided either at the work site or away from the work site to perform the work. The job placement may not necessarily be a permanent employment outcome for the individual.

(Authority: Secs. 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c))

10. In § 361.2, paragraphs (b)(1) and (b)(2) (ii)–(v) are revised and a new paragraph (b)(2)(vi) is added to read as follows:

**§ 361.2 The State plan: General requirements.**

* * * * *

(b) * * *

(1) A part providing detailed commitments specified by the Secretary that must be amended or reaffirmed every three years, including—

(i) A description of how rehabilitation engineering services will be provided to assist an increasing number of individuals with handicaps;

(ii) A summary of the results of a comprehensive, Statewide assessment of the rehabilitation needs of individuals with severe handicaps residing within the State and the State's response to the assessment; and

(iii) An acceptable plan under 34 CFR Part 363.

(2) * * *

(ii) Estimates of the number of individuals with handicaps who will be served with funds provided under the Act;

(iii) A description of the methods used to expand and improve services to those individuals who have the most severe handicaps, including individuals served under 34 CFR Part 363;

(iv) A justification for and description of the order of selection (§ 361.36) of groups of individuals with handicaps to whom vocational rehabilitation services will be provided (unless the designated State unit assures that it is serving all eligible individuals with handicaps who apply);

(v) The outcome and service goals to be achieved for individuals with handicaps in each priority category within the order of selection in effect in the State and the time within which these goals may be achieved. These goals must include those objectives, established by the State unit and consistent with those set by the Secretary in instructions concerning the State plan, that are measurable in terms of service expansion or program improvement in specified program areas, and that the State unit plans to achieve during a specified period of time; and

(vi) A description of the plans, policies, and methods to be followed to assist in the transition from education to employment-related activities, including a summary of the previous year's activities and accomplishments.

* * * * *

**§ 361.2 [Amended]**

11. In § 361.2(d), in the next-to-last sentence, remove ", and be administered in accordance with, this Act and the Developmental Disabilities Assistance and Bill of Rights Act." and add, in its place, "and be administered in accordance with this Act and the Developmental Disabilities Act of 1984."

12. In § 361.17, paragraphs (a), (b) introductory text and (b)(1) are revised to read as follows:

**§ 361.17 State studies and evaluations.**

(a) *General provisions.* The State plan must assure that the State unit conducts continuing Statewide studies of the needs of individuals with handicaps within the State, including a full needs assessment for serving individuals with severe handicaps; the State's need for rehabilitation facilities; and the methods by which these needs may be most effectively met.

(b) *Scope of Statewide studies.* The continuing Statewide studies must—

(1) Determine the relative needs for vocational rehabilitation services of different significant segments of the population of individuals with handicaps, including utilizing data provided by State special education agencies under section 618(b)(3) of the Education of the Handicapped Act, with special reference to the need for expanding services to individuals with the most severe handicaps;

* * * * *

13. Section 361.18 is revised to read as follows:

**§ 361.18 State plan and other policy development consultation.**

(a) *Public participation in State plan development.*

(1) The State plan must assure that the State unit conducts public meetings throughout the State, after appropriate and sufficient notice, to allow interested groups, organizations and individuals an opportunity to comment on the State plan and the policies governing the provision of vocational rehabilitation services within the State.

(2) The State plan must include a summary of the public comments and the State unit's response to those comments.

(3) The State plan must further assure that the State unit establishes and maintains a written description of other methods used to obtain and consider views on State plan development and policy development and implementation.

(b) *Consultation with Indian tribes.* The State plan must further assure that, as appropriate, the State unit actively consults in the development of the State plan with those Indian tribes and tribal organizations and native Hawaiian organizations that represent significant numbers of individuals with handicaps within the State.

(c) *Other consultations.* (1) The State plan must further assure that the State unit seeks and takes into account, in connection with matters of general policy development and implementation arising in the administration of the State plan, the views of—

(i) Current or former recipients of vocational rehabilitation services, or, as appropriate, their parents, guardians or other representatives;

(ii) Providers of vocational rehabilitation services; and

(iii) Others interested in vocational rehabilitation.

(2) Matters of general policy development and implementation include, but are not limited to—

(i) Program planning, development, and evaluation;

(ii) Development of legislative and budgetary proposals;

(iii) Assessing research and services proposals;

(iv) Affirmative action for employment of qualified individuals with handicaps; and

(v) Development of procedures for review of rehabilitation counselor or coordinator determinations.

(d) *Public access.* The State plan must further assure the State unit will make available to the public for review and inspection a report of activities undertaken in the area of State plan and policy development as well as a

summary of comments submitted at the scheduled public meetings and the State unit's response to these comments.

(Authority: Secs. 101(a)(18) and 101(a)(23) of the Act; 29 U.S.C. 721(a)(18) and 721(a)(23))

14. In § 361.20, paragraph (a) is revised to read as follows:

**§ 361.20 Establisnment and maintenance of information and referral resources.**

(a) *General provisions.* The State plan must assure the establishment and maintenance of information and referral programs adequate to ensure that individuals with handicaps within the State are given accurate information about State vocational rehabilitation services and independent living services, vocational rehabilitation services available from other agencies, organizations, and rehabilitation facilities, and, to the extent possible, other Federal and State services and programs that assist individuals with handicaps, including client assistance programs. The State plan must also assure that the State unit will refer individuals with handicaps to other appropriate Federal and State programs that might be of benefit to them. The State plan must further assure that the State unit will utilize existing information and referral systems in the State to the greatest extent possible.

* * * * *

15. A new § 361.25 is added to read as follows:

**§ 361.25 State-imposed requirements.**

The designated State unit shall identify as a State-imposed requirement any State rule or policy relating to its administration or operation of programs under the Act, including any rule or policy based on interpretation of any Federal law, regulation, or guideline.

(Authority: Sec. 17 of the Act; 29 U.S.C. 716)

**§ 361.30 [Amended]**

16. The authority citation for § 361.30 is revised to read as follows:

(Authority: Sec. 101(a)(6) of the Act; 29 U.S.C. 721(a)(6))

**§ 361.32 [Amended]**

17. Remove the period at the end of the first sentence of § 361.32(c) and add, in its place, ", and, as appropriate, evaluations by personnel skilled in rehabilitation engineering technology:".

**§ 361.33 [Amended]**

18. In the second sentence of § 361.33(a), add "recreational," after "educational,".

19. In the first sentence of § 361.33(b), add "employability," after "individual's".

20. At the end of the last sentence in § 361.33(b), remove the period, and add, in its place, ", and the need for rehabilitation engineering services.".

**§ 361.34 [Amended]**

21. In § 361.34, in paragraph (c), remove the word "handicapped" in the third sentence, and in paragraph (e)(1) and paragraph (e)(2) remove the words "he or she" and add, in their place, the words "the individual".

**§ 361.35 [Amended]**

22. In § 361.35(c)(2), remove the words "his or her" wherever they appear and add, in their place, the words "the individual's"; in the second sentence remove the words "he or she" and add, in their place, the words "the individual"; at the end of the second sentence remove the words "administrative review and fair hearings" and add, in their place, "review of rehabilitation counselor or coordinator determinations"; and at the beginning of the third sentence remove the words "When appropriate, the" and add, in their place, the word "The".

23. In § 361.35(d), remove the words "he or she" and add, in their place, the words "the individual", and in § 361.35 (d) and (e) remove the words "his or her" wherever they appear and add, in their place, the words "the individual's".

24. Section 361.36 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 361.36 Order of selection for services.**

(a) *General provisions.* The State plan must include and explain the justification for the order to be followed in selecting individuals with handicaps to be provided vocational rehabilitation services if services cannot be provided to all eligible individuals.

(b) *Priority for individuals with severe handicaps.* The State plan must assure that those individuals with the most severe handicaps are selected for service before other individuals with handicaps.

* * * * *

25. Section 361.38 is revised to read as follows:

**§ 361.38 Services to handicapped American Indians.**

The State plan must assure that vocational rehabilitation services are provided to American Indians with handicaps residing in the State to the same extent that these services are provided to other significant groups of the State's handicapped population. The State plan must further assure that the designated State unit continues to provide vocational rehabilitation services, including, as appropriate, services traditionally used by Indian tribes, to American Indians with handicaps on reservations eligible for services by a special tribal program under section 130 of the Act.

(Authority: Secs. 101(a)(20) and 130 of the Act; 29 U.S.C. 721(a)(20) and 750)

26. Section 361.39 is amended by revising paragraphs (c) and (m) to read as follows:

**§ 361.39 The case record for the individual.**

* * * * *

(c) Documentation supporting any determination that the individual's handicaps are severe;

* * * * *

(m) Documentation concerning any action and decision involving the request by the individual with handicaps for review of rehabilitation counselor or coordinator determinations under § 361.48; and

* * * * *

27. In § 361.40 paragraphs (a) and (c) are revised to read as follows:

**§ 361.40 The individual written rehabilitation program: Procedures.**

(a) *General provisions.* The State plan must assure that an individualized written rehabilitation program is initiated and periodically updated for each eligible individual and for each individual being provided services under an extended evaluation to determine rehabilitation potential. The State plan must also assure that vocational rehabilitation services are provided in accordance with the written program. The individualized written rehabilitation program must be developed jointly by the designated State unit staff member and the individual with handicaps or, as appropriate, that individual and a parent, guardian or other representative, including other suitable professional and informed advisors. The State unit must provide a copy of the written program, and any amendments, to the individual with handicaps or, as appropriate, that individual and a parent, guardian, or other representative and must advise each individual with handicaps or that individual's representative of all State unit procedures and requirements affecting the development and review of individualized written rehabilitation programs.

* * * * *

(c) *Review.* The State must assure that the individualized written program will be reviewed as often as necessary but at

least on an annual basis. Each individual with handicaps, or, as appropriate, that individual's parent, guardian, or other representative, must be given an opportunity to review the program and, if necessary, jointly redevelop and agree to its terms.

* * * * *

28. Section 361.41 is amended by revising paragraph (a) and the authority citation following the section, redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

**§ 361.41 The individualized written rehabilitation program: Content.**

(a) *Scope of content.* The State plan must assure that each individualized written rehabilitation program is based on a determination of employability designed to achieve the vocational objective of the individual and is developed through assessments of the individual's particular rehabilitation needs. Each individualized written rehabilitation program must, as appropriate, include but not be limited to, statements concerning—

(1) The basis on which a determination of eligibility has been made, or the basis on which a determination has been made that an extended evaluation of vocational rehabilitation potential is necessary to make a determination of eligibility;

(2) The long-range and intermediate rehabilitation objectives established for the individual based on an assessment determined through an evaluation of rehabilitation potential;

(3) The specific rehabilitation services to be provided in order to achieve the established rehabilitation objectives including, if appropriate, rehabilitation engineering services;

(4) An assessment of the expected need for post-employment services;

(5) The projected dates for the initiation of each vocational rehabilitation service, and the anticipated duration of each service;

(6) A procedure and schedule for periodic review and evaluation of progress toward achieving rehabilitation objectives based upon objective criteria, and a record of these reviews and evaluations;

(7) A precedure and schedule for a reassessment, prior to case closure, of the need for post-employment services;

(8) The views of the individual with handicaps, or as appropriate, that individual and a parent, guardian, or other representative, including other suitable professional and informed advisors, concerning the individual's goals and objectives and the vocational rehabilitation services being provided;

(9) The terms and conditions for the provision of vocational rehabilitation services, including responsibilities of the individual with handicaps in implementing the individualized written rehabilitation program, the extent of client participation in the cost of services if any, and the extent to which comparable services and benefits are available to the individual under any other program;

(10) An assurance that the individual with handicaps has been informed of that individual's rights and the means by which the individual may express and seek remedy for any dissatisfaction, including the opportunity for a review of rehabilitation counselor or coordinator determinations under § 361.48;

(11) An assurance that the individual with handicaps has been provided a detailed explanation of the availability of the resources within a client assistance program established under section 112 of the Act;

(12) The basis on which the individual has been determined to be rehabilitated under § 361.43; and

(13) The plans for the provision of post-employment services after a suitable employment goal has been achieved and the basis on which those plans are developed; and, if appropriate for individuals with severe handicaps, a statement of how these services will be provided or arranged for through cooperative agreements with other providers.

(b) *Supported employment placements.* Each individualized written rehabilitation program must also contain, for individuals with severe handicaps for whom a vocational objective of supported employment has been determined to be appropriate—

(1) A description of the time-limited services, not to exceed 18 months in duration, to be provided by the State unit; and

(2) A description of the extended services needed, an identification of the State, Federal, or private programs that will provide the continuing support, and a description of the basis for determining that continuing support is available in accordance with 34 CFR 363.11(e)(2).

* * * * *

(Authority: Secs. 101(a)(9), (a)(11), 102 and 634(a) of the Act; 29 U.S.C. 721(a)((9), (a)(11), 722, and 795m)

29. Section 361.42 is amended by revising paragraph (a)(2) and (a)(13), removing the words "a handicapped" from paragraph (a)(5) and adding, in their place, the word "that", removing "and" at the end of paragraph (a)(14), redesignating paragraph (a)(15) as (a)(16), adding a new paragraph (a)(15), and revising redesignated paragraph (a)(16) to read as follows:

**§ 361.42 Scope of State unit program: Vocational rehabilitation services for individuals.**

(a) * * *

(2) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout the program of services for an individual with handicaps, referral necessary to help individuals with handicaps secure needed services from other agencies, and advising clients and client applicants about client assistance programs under 34 CFR Part 370.

* * * * *

(13) Post-employment services necessary to maintain or regain other suitable employment;

* * * * *

(15) Rehabilitation engineering services; and

(16) Other goods and services that can reasonably be expected to benefit an individual with handicaps in terms of employability.

* * * * *

30. In § 361.43, paragraph (b) and the authority citation are revised to read as follows:

**§ 361.43 Individuals determined to be rehabilitated.**

* * * * *

(b) *Post-employment services.* The State plan must also assure that after an individual has been determined to be rehabilitated, the State unit will provide post-employment services if necessary to assist an individual to maintain or regain other suitable employment.

(Authority: Secs. 12(c), 101(a)(6) and 103(a)(2) of the Act; 29 U.S.C. 711(c), 721(a)(6) and 723(a)(2))

31. Section 361.45 is amended by revising the last sentence in paragraph (b) to read as follows:

**§ 361.45 Standards for facilities and providers of services.**

* * * * *

(b) * * * State unit standards must assure that any rehabilitation facility to be utilized in the provision of vocational rehabilitation services complies with the requirements of the Architectural Barriers Act of 1968, the "American Standards Specification for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," No. A117.1–1961, as amended, and its implementing standards in 41 CFR Part 101–19.6 *et*

*seq.*, and the Uniform Federal Accessibility Standards.

* * * * *

32. Section 361.47 is amended by revising the section heading and paragraph (b) to read as follows:

**§ 361.47 Financial need; determination of the availability of comparable services and benefits.**

* * * * *

(b) *Availability of comparable services and benefits.* (1) The State plan must assure that before the State unit provides any vocational rehabilitation services, except those services enumerated in paragraph (b)(2) of this section, to an individual with handicaps, or to members of that individual's family, it determines whether comparable services and benefits are available under any other program.

(2) The requirements of paragraph (b)(1) of this section do not apply to the following services:

(i) Evaluation of rehabilitation potential.

(ii) Counseling, guidance, and referral.

(iii) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, that are not provided in institutions of higher education (§ 361.42(a)(4)).

(iv) Placement.

(v) Rehabilitation engineering services.

(vi) Post-employment services consisting of the services listed under paragraphs (b)(2)(i)–(v) of this section.

(3) The requirements of paragraph (b)(1) of this section also do not apply if a licensed medical professional detemines that a delay in the provision of vocational rehabilitation services in order to determine the availability of comparable services and benefits under any other program will cause an individual with handicaps to be at extreme medical risk.

(4) The State plan must assure also that if comparable services and benefits are available, they must be utilized to meet, in whole or in part, the cost of vocational rehabilitation services.

(Authority: Secs. 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

33. Section 361.48 is revised to read as follows:

**§ 361.48 Review of rehabilitation counselor or coordinator determinations.**

(a) *Appeal procedures.* (1) Except as provided in paragraph (c) of this section, the State plan must assure that procedures are established by the Director of the designated State unit so that any applicant for or recipient of vocational rehabilitation services who is dissatisfied with any determinations made by a rehabilitation counselor or coordinator concerning the furnishing or denial of services may request a timely review of those determinations.

(2) At a minimum each State's review procedures must provide that—

(i) A hearing by an impartial hearing officer is held within 45 days of request by the applicant or recipient;

(ii) The applicant or recipient, or, if appropriate, the individual's parent, guardian, or other representative, is afforded an opportunity to present additional evidence, information, and witnesses to the impartial hearing officer, to be represented by counsel or other appropriate advocate, and to examine all witnesses and other relevant sources of information and evidence;

(iii) The impartial hearing officer makes a decision based on the provisions of the approved State plan and the Act and provides to the applicant or recipient, or, if appropriate, the individual's parent, guardian, or other representative, and to the Director of the designated State unit a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing;

(iv) If the Director of the designated State unit decides to review the decision of the impartial hearing officer, the Director shall notify in writing the applicant or recipient, or, if appropriate, the individual's parent, guardian, or other representative, of that intent within 20 days of the mailing of the impartial hearing officer's decision;

(v) If the Director of the designated State unit fails to provide the notice required by paragraph (a)(2)(iv) of this section, the impartial hearing officer's decision becomes a final decision;

(vi) The decision of the Director of the designated State unit to review any impartial hearing officer's decision must be based on standards of review contained in written State unit policy;

(vii) If the Director of the designated State unit decides to review the decision of the impartial hearing officer, the applicant or recipient, or, if appropriate, the individual's parent, guardian, or other representative, is provided an opportunity for the submission of additional evidence and information relevant to the final decision;

(viii) Within 30 days of providing notice of intent to review the impartial hearing officer's decision, the Director of the designated State unit makes a final decision and provides a full report in writing of the decision, and of the findings and grounds for the decision, to the applicant or recipient, or, if appropriate, the individual's parent, guardian, or other representative; and

(ix) The Director of the designated State unit cannot delegate responsibility to make any final decision to any other officer or employee of the designated State unit.

(b) *Extensions of time.* Except for the time limitation established in paragraph (a)(2)(iv) of this section, each State's review procedures may provide for reasonable time extensions at the request of any party.

(c) *State fair hearing board.* The provisions of paragraphs (a) and (b) of this section are not applicable if there is in any State a fair hearing board that was established before January 1, 1985 that is authorized to review rehabilitation counselor or coordinator determinations and to carry out the responsibilities of the Director of the designated State unit under this section.

(d) *Informal reviews.* States may continue to use an informal administrative review process if it is likely to result in a timely resolution of disagreements in particular instances.

(e) *Data collection.* The Director of the designated State unit shall collect and submit, at a minimum, the following data to the Secretary for inclusion each year in the annual report to Congress under section 13 of the Act:

(1) A description of State procedures for review of rehabilitation counselor or coordinator determinations.

(2) The number of appeals to impartial hearing officers and the State Director, including the type of complaints and the issues involved.

(3) The number of decisions by the State Director reversing in whole or in part a decision of the impartial hearing officer.

(4) The number of decisions affirming the position of the dissatisfied vocational rehabilitation applicant or recipient assisted through the client assistance program.

(Authority: Secs. 12(c), 101(a)(6), and 102(d) of the Act; 29 U.S.C. 711(c), 721(a)(6) and 722(d))

**§ 361.49 [Amended]**

34. In § 361.49, remove "(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))" at the end of paragraph (e)(4), remove paragraph (f), and add an authority citation at the end of the section to read as follows:

(Authority: Secs. 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6)).

**§ 361.71 [Amended]**

35. In § 361.71(b), remove the words "a handicapped" and add, in their place, the word "the".

**§ 361.72 [Amended]**

36. In § 361.72(b), remove the words "most severely handicapped individuals" and add, in their place, the works "individuals with the most severe handicaps".

**§ 361.73 [Amended]**

37. In § 361.73(c), remove "80 percent" and add, in its place, "the applicable Federal share in accordance with § 361.86".

38. Section 361.85 is amended by removing paragraph (d); by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; by adding a new paragraph (b); and by revising the authority citation to read as follows:

**§ 361.85 Allotment of Federal funds for vocational rehabilitation services.**

* * * * *

(b) For fiscal year 1987 and for each subsequent fiscal year, the Secretary reserves, from the amount appropriated for grants under section 100(b)(1), not less than one quarter of one percent and not more than one percent to carry out Part D of Title I of the Act.

* * * * *

(Authority: Secs. 12(c) and 110 of the Act; 29 U.S.C. 711(c) and 730)

39. Section 361.86 is revised to read as follows:

**§ 361.86 Payments from allotments for vocational rehabilitation services.**

(a) Except as provided in § 361.85(d), the Secretary pays to each State an amount computed in accordance with the requirements of section 111 of the Act. For fiscal years 1987 and 1988, the Federal share for each State is 80 percent (except for the cost of construction of rehabilitation facilities). Beginning in fiscal year 1989, the Federal share for each State decreases by one percent per year for five years for funds received in excess of the amount received in fiscal year 1988. The Federal share of these excess payments is 79 percent in fiscal year 1989; 78 percent in fiscal year 1990; 77 percent in fiscal year 1991; 76 percent in fiscal year 1992; and 75 percent in fiscal year 1993 (except for the cost of construction of rehabilitation facilities).

(b)(1) Amounts otherwise payable to a State under this section for any fiscal year are reduced by the amount (if any) by which expenditures from non-Federal sources, as specified in § 361.76 (except for expenditures with respect to which the State is entitled to payments under Subpart F of this part), for that fiscal year under the State's approved plan for vocational rehabilitation services are less than expenditures under the plan for the average of the total of those expenditures for the three preceding fiscal years.

(2) The Secretary may waive or modify any requirement or limitation in section 111(a)(2)(A) and (B) of the Act, if the Secretary determines that a waiver or modification of the State maintenance of effort requirement is necessary in order to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that cause significant unanticipated expenditures or reductions in revenue and result in a general reduction of programs within the State. A written request for waiver or modification, including supporting justification, must be submitted to the Secretary as soon as the State determines that an exceptional or uncontrollable circumstance will prevent it from making its required expenditures from non-Federal sources.

(3) If a reduction in payments for any fiscal year is required in the case of a State where separate agencies administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for blind individuals, and the rest of the plan, respectively, the reduction is made in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan are less than they were under that part of the plan for the average of the total of those expenditures for the three preceding fiscal years.

(Authority: Secs. 7(7), 12(c) and 111 of the Act; 29 U.S.C. 706(7), 711(c) and 731)

**§ 361.87 through 361.91 [Redesignated as §§ 361.88 through 361.92 respectively.]**

40. Sections 361.87 through 361.91 are redesignated as §§ 361.88 through 361.92, respectively, and a new § 361.87 is added to read as follows:

**§ 361.87 Reallotment.**

(a) The Secretary makes a determination as to what States (if any) will not use their full allotment not later than 45 days before the end of a fiscal year.

(b) As soon as possible, but not later than the end of the fiscal year, the Secretary reallots these funds to other States that can use those additional funds during the fiscal year, or to pay for initial expenditures during the subsequent fiscal year. Funds realloted to another State are considered to be an increase to that State's allotment for the fiscal year for which the funds were appropriated.

(Authority: Sec. 110(c)(1) of the Act; 29 U.S.C. 730)

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## LIST OF PUBLIC LAWS

**Last List November 17, 1987**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

**H.J. Res. 97/Pub. L. 100-164**

To recognize the Disabled American Veterans Vietnam Veterans National Memorial as a memorial of national significance. (Nov. 13, 1987; 101 Stat. 905; 2 pages) Price: $1.00

**H.J. Res. 130/Pub. L. 100-165**

To designate the week beginning November 22, 1987, as "National Family Caregivers Week". (Nov. 13, 1987; 101 Stat. 907; 2 pages) Price: $1.00

**S.J. Res. 66/Pub. L. 100-166**

To designate the week of November 22, 1987, through November 28, 1987, as "National Family Week". (Nov. 13, 1987; 101 Stat. 909; 1 page) Price: $1.00

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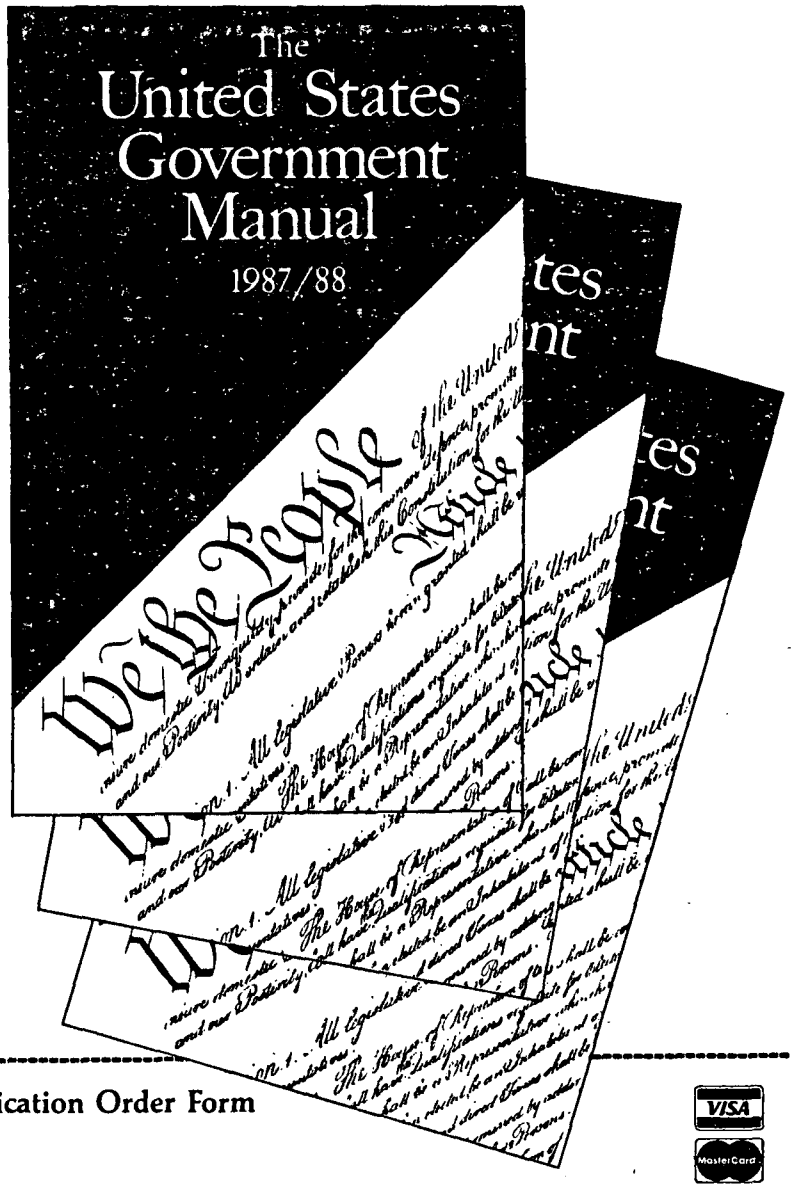


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